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ARCHBOLD'S PARISH OFFICER,

AND

SHAW'S  
PARISH LAW.

*Fourth Edition.*

BY JAMES PATERSON, Esq.

BARRISTER-AT-LAW.

London:  
SHAW AND SONS, FETTER LANE,  
Law Printers and Publishers.

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1864.

LONDON: PRINTED BY SHAW AND SONS, FETTER LANE.

## ADVERTISEMENT

TO THE

FOURTH EDITION.

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THIS Fourth Edition of Mr. Archbold's Parish Officer has been carefully adapted by the Editor to the present state of the law, all the numerous changes during the last six years in the statutes, and decisions, being incorporated in their proper places. Many additions have been made, and some parts have been entirely rewritten. Among the additions is an introductory chapter on the Parish and those general features of parochial affairs which do not fall properly under the particular heads which follow. The chapters on Baths and Washhouses, Clergymen, Churchwardens, Highway Surveyors, Metropolitan Vestries, are either entirely new or greatly enlarged. Particular attention has been given to the amplification of the titles "Churchwardens," "Clergymen," so as to give those subjects the same prominent place in

this work which they hold in the parochial system. No pains has been spared to render the work accurate and worthy of the favour it has hitherto received.

JAMES PATERSON.

*Goldsmith's Building, Temple,  
January, 1864.*

## ADVERTISEMENT

TO THE

THIRD EDITION.

---

I HAVE taken great pains in editing this Edition. I have also added to it very considerably, particularly under the head of "*Clergymen of the Parish.*" It was intimated to me, from some clergymen, that it was desirable I should, under this head, state shortly the law relating to Advowsons and Tithes,—subjects in which they are, of course, much interested. I have done so: I have stated the whole law respecting Advowsons, including presentation, institution, induction, &c., and the mode of aliening an Advowson when vested in trustees under the recent statute 19 & 20 Vict. c. 50; I have treated of Tithes, to whom payable, exemptions, what estates may be had in them, how aliened, how commuted, how set out, how sued for and recovered, &c. I have been obliged, from the nature of the work itself, to give merely a summary of the law upon both these subjects; to treat of them at large would of course occupy infinitely more space than I could assign to them.

Under other heads, I have described the duties of the different officers of a parish, as enumerated

and particularly adverted to in the Preface to the first edition. And throughout the whole of the present edition, I think that the reader will find that I have taken infinite pains to render it complete and correct.

J. F. A.

9, *King's Bench Walk, Temple,*  
*November, 1857.*

# PREFACE

TO THE

FIRST EDITION.

---

I HAVE written largely upon most subjects of Parish Law, and have incidentally treated of the appointment and the duties of the several Parish Officers. But it has been suggested to me, by my Publishers, that it would be very desirable, and a great convenience to Parish Officers, if I were to write a work, defining exactly their respective duties, giving plain directions for the performance of them, stating the modes of appointment to their several offices, and other incidental matters, and giving the several Acts of Parliament now in force upon each particular subject. I have done so; and the reader will find in this little work the several subjects which have been suggested to me, treated of in the manner I have now mentioned, and arranged alphabetically for the convenience of reference:—namely,—Church Rate,—Churchwardens,—Clergymen of the Parish,—Collector of Highway Rates,—Collector of Poor Rate,—Constable,—Guardians of the Poor,—Highway Rate,—Surveyors of Highways,—Overseers of the Poor,



and Assistant Overseer,—Paid Officers, including the Officers of Workhouses,—Parish,—Parish Clerk,—Relieving Officer,—Sexton,—Vestry,—Watching and Lighting. In these several cases, I have treated of the appointment of these officers, have defined minutely their respective duties, have stated the penalties assigned by law for a neglect or defective execution of them, and have treated in fact of every matter incidental to the offices, with which I thought it would be necessary or desirable for these officers to be acquainted.

Church Rate, I have treated of, principally, with reference to the duties of Churchwardens in respect of it. I have stated in what cases and for what purposes it may be made, and how made; and how payment of it may be enforced, either in the ecclesiastical court, or by summary proceeding: before Justices of the Peace, with the necessary forms.

Churchwardens, their appointment, their rights and duties, and actions by or against them, are treated of. I have also shortly noticed Chapelwardens.

Clergymen of the Parish I have noticed as well: not that I would be understood as classing them with Parish Officers, but there are some of their duties in which their parishioners are more immediately interested,—baptism, marriage, and burials, and the entries thereof in the Register,—that I thought it would be desirable that I should notice.

Collectors of Highway Rate, their appointment and duties,—and Collectors of Poor Rate in Unions, and in Parishes which are not in Unions,—are treated of.

Constables are treated of at considerable length : The Petty Constable, his appointment, his duty in apprehending offenders without warrant, and in apprehending them under a warrant, together with his duties in all other cases : his fees, allowances, &c. ; his punishment for neglect of duty, and the manner in which the law protects him in the due exercise of his duty. I have treated also of Borough Constables :—County and District Constables,—Local Constables,—Constables under the Watching and Lighting Acts,—Private Constables,—Constables on Canals and Navigable Rivers,—and Special Constables.

Guardians of the Poor,—their election,—their meetings,—their contracts,—their duties,—and the appointment and duties of their Clerk, are fully treated of. I have also noticed Guardians of the Poor for single parishes, and Guardians under Local Acts.

Highway Rate, how made and levied, I have considered chiefly in reference to the duty of the Surveyors of the Highways in the making and levying of it.

Highways, so far as respects the officers appointed for the repairs, &c. of them :—Surveyors for single

parishes, &c.—Officers in large parishes,—Officers appointed in districts.—Their duties in repairing the highways,—in widening the highways,—in stopping up or diverting the highways,—in erecting direction posts, &c.,—in removing snow and other obstructions,—in prosecuting for nuisances, &c.

Overseers of the Poor, their appointment;—their meetings;—their duty in relieving the poor in single parishes,—and in unions or under select vestries,—their duty in removing the poor,—their duty as to the poor rate, their duty as to pauper lunatics,—their duty as to apprenticing poor children, as to the licensing of beer-houses, as to the borough or county rate, as to burying of dead bodies, as to constables' lists, as to disorderly houses, gaming houses, &c., as to gaol passes, as to the list of voters for guardians, as to jury lists—as to the registration of parliamentary voters. Their accounts, and how audited,—by Justices of Peace,—by the Auditors of Unions,—and by District Auditors. Frauds and offences by them: frauds by them, with respect to settlements;—neglect of duty, disobedience of orders of justices, &c.,—embezzlement of money, &c.,—and being concerned in furnishing goods, &c., for the poor. Actions by and against them. Also, the appointment and duties of Assistant Overseer.

Paid Officers, their appointment and duties, &c.; —Clerk to the Guardians;—Treasurer of Unions;

—Relieving Officer;—Medical Officer;—Chaplain;  
—Master of the Workhouse,—Matron of the Workhouse,—Schoolmaster and Schoolmistress in the Workhouse,—Nurse, Porter, and Superintendent of Out-door Labour.

Parishes :—their boundaries ; parish property.

Parish Clerk.

Relieving Officer.

Sexton.

Vestry :—The Parish Vestry at common law ; its duties as to the Highways ;—as to the Rating of Landlords to the Poor for Small Tenements ;—as to the Appointment of Churchwardens ;—as to Voting for a Church Rate ; as to the Nomination of Overseers of the Poor ; and as to the Nomination of Assistant Overseer.—Also, the Appointment and Duties of the Vestry Clerk.—Vestries appointed under stat. 1 & 2 Will. 4, c. 60 ; the adoption of the Act ; the election of Vestrymen and Auditors ; and the Powers and Duties of the Vestrymen and Auditors so elected. Select Vestries ;—how elected and appointed,—and their proceedings.

Watching and Lighting :—the adoption of the Act ;—the Inspectors, their Authority and Duties ;—the Rate ;—Watching ;—Lighting ;—Fire Engines.

All this, the reader will find fully treated of, in this work. As to the manner in which it is done,

I claim but little merit; it is written in a plain, simple style, intelligible to every one. I believe it to be correct, and if it be found useful I shall be perfectly satisfied.

J. F. A.

9, *King's Bench Walk, Temple,*  
*September, 1852.*

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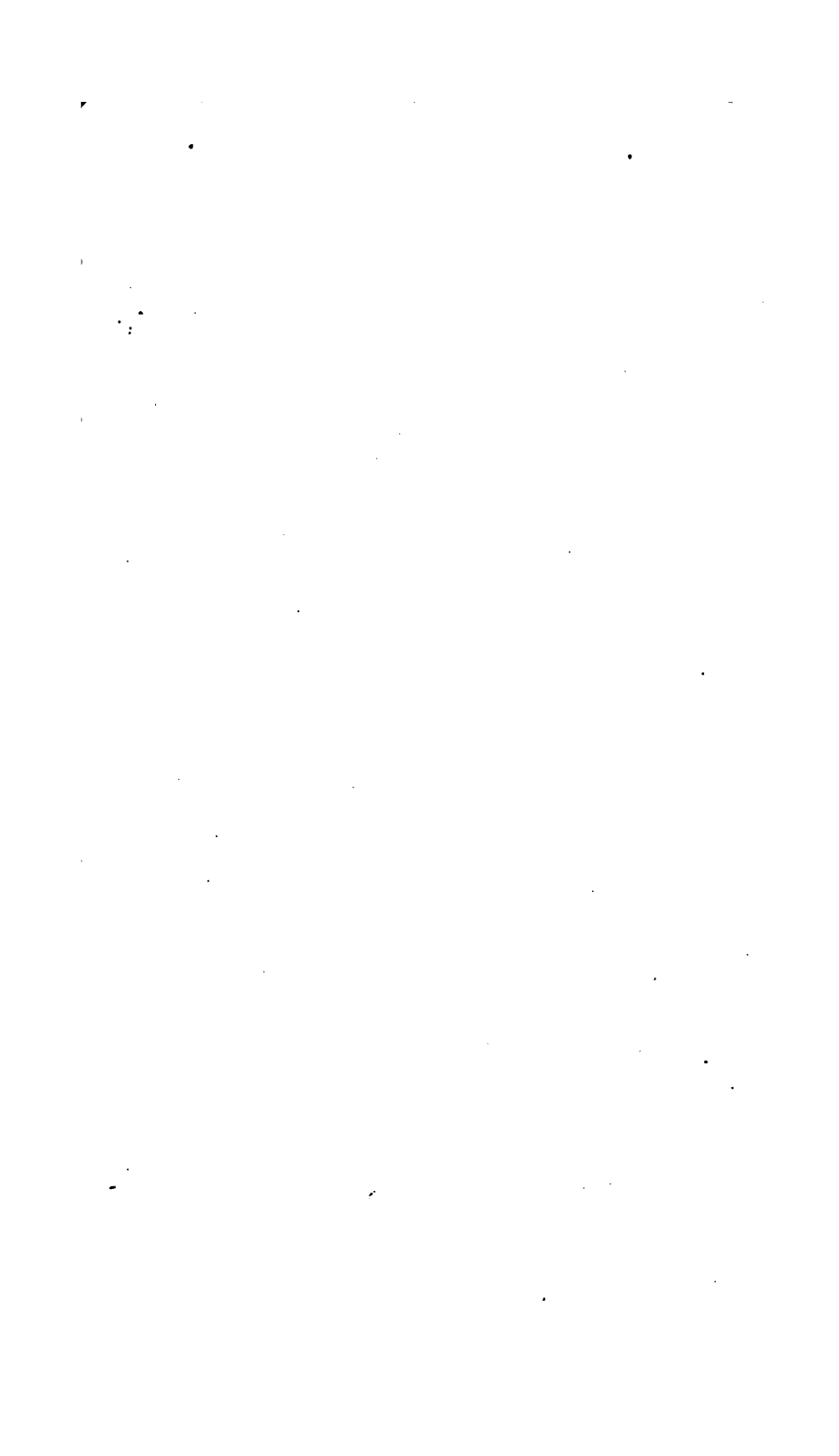
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 23 & 24 Vict. c. 30, ss. 1, 2, 3, 4, p. 14.—ss. 5, 6, 7, p. 15.  
 23 & 24 Vict. c. 32, ss. 2, 3, 4, 5, 6, 7, p. 49.  
 23 & 24 Vict. c. 51, s. 1, p. 12.—ss. 2, 3, 4, 5, 6, p. 13.  
 23 & 24 Vict. c. 58, p. 28.  
 23 & 24 Vict. c. 67, p. 237.  
 23 & 24 Vict. c. 77, ss. 2, 3, p. 259.—s. 11, pp. 260, 319.—s. 4, p. 261.—s. 9, p. 260.—s. 5, p. 262.—s. 13, p. 272.  
 23 & 24 Vict. c. 142, ss. 1, 3, 10, 11, p. 92.  
 24 Vict. c. 14, s. 1, p. 27.—ss. 3, 6, 7, p. 28.  
 24 & 25 Vict. c. 55, ss. 9, 10, p. 186.—s. 4, p. 192.—ss. 4, 8, p. 193.—s. 8, p. 194.—s. 6, p. 203.  
 24 & 25 Vict. c. 59, s. 2, p. 214.  
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 24 & 25 Vict. c. 96, p. 155.  
 24 & 25 Vict. c. 97, p. 156.  
 24 & 25 Vict. c. 113, ss. 4, 5, 8, p. 24.—ss. 9, 14, 15, p. 25.—ss. 16, 17, 19, p. 26.—ss. 20, 21, p. 27.  
 24 & 25 Vict. c. 125, p. 11.  
 25 & 26 Vict. c. 43, s. 1, p. 211.—ss. 1, 2, 3, 5, 6, 7, 10, 16, p. 211.  
 25 & 26 Vict. c. 57, s. 7, p. 321.  
 25 & 26 Vict. c. 61, ss. 5, 6, 7, 9, 10, p. 227.—ss. 12, 15, 16, 17, 18, 19, 21, 23, 25, 26, p. 228.—s. 36, p. 229.—s. 42, p. 254.  
 25 & 26 Vict. c. 87, s. 15, p. 28.  
 25 & 26 Vict. c. 103, ss. 2, 9, 10, 16, 30, 32, p. 184.—s. 30, p. 187.—ss. 13, 16, 17, p. 301.—ss. 18, 19, 20, 27, 28, 30, 34, pp. 301, 302.  
 25 & 26 Vict. c. 107, s. 4, p. 321.  
 25 & 26 Vict. c. 111, s. 20, p. 205.  
 25 & 26 Vict. c. 113, s. 1, p. 215.  
 25 & 26 Vict. c. 114, s. 2, p. 169.

merely taken of so convenient an existing subdivision of the country to engraft upon it ecclesiastical institutions. On this latter theory the parish was a subdivision of the ancient hundred, and originally was known under the name of vill or town. It was through the machinery of parishes that our ancient Kings assessed and collected the public taxes, and the germs of local self-government have been detected by antiquaries and historians in the earliest records of such distinctions. Blackstone says, that in the earliest ages of christianity parishes were unknown, or at least signified the same that a diocese does now. There was no appropriation of ecclesiastical dues to any particular church, but every man was at liberty to contribute his tithes to whatever priest or church he pleased, provided only he did it to some; or if he made no special appointment or appropriation thereof, they were paid into the hands of the bishop, whose duty it was to distribute them among the clergy, and for other pious purposes, according to his own discretion. Selden says, the clergy lived in common without any division of parishes, long after the year 636, which, Camden says, was the origin of parishes. The distinction of parishes existed about 970, in the laws of King Edgar. Hobart fixes the date at 1179.

*Advantages of.]* But whatever may have been the precise origin of the distinction of parishes, they have for centuries been established, and form part of the internal organization of the country for civil as well as ecclesiastical purposes. The parish has long been a convenient district, containing within itself the powers of self-government, and though in some instances, for certain limited purposes, they have been thrown into unions with neighbouring parishes and districts, they still maintain this leading characteristic. They collect funds and manage the distribution thereof among their own poor. The parish has its church and officers charged with the duty of maintaining the fabric, and a churchyard or burial ground connected therewith. The parish is bound to repair its own highways, and for that purpose to appoint surveyors, subject to the modifications recently introduced by the Highway Districts Act. There are also various statutes which more or less modify the powers of self-government in parishes in respect of constables, lighting and watching, public health, and miscellaneous subjects connected with local government, which will afterwards be fully noticed. The vestry is the organ through which the parish deliberates and speaks on most of these subjects, and it forms a school for training the parishioners to those habits of vigilance, economy, and management which become useful in the conduct of their own private affairs. Each inhabitant naturally takes an interest in what locally

concerns him, and a knowledge that those who pay various local rates have the power of taxing themselves, and watching the expenditure, introduces a wholesome sense of responsibility among the various officials who are elected to manage local affairs.

*Boundaries of parishes.]* With regard to the boundaries of parishes, Blackstone (1 Bl. Com. 112) gives the following account. "It seems pretty clear and certain that the boundaries of parishes were originally ascertained by those of a manor or manors, since it very seldom happens that a manor extends itself over more parishes than one, though there are often many manors in one parish. The lords, as christianity spread itself, began to build churches upon their own demesnes or wastes, to accommodate their tenants in one or two adjoining lordships; and in order to have divine service regularly performed therein, obliged all their tenants to appropriate their tithes to the maintenance of the one officiating minister, instead of leaving them at liberty to distribute them among the clergy of the diocese in general, and this tract of land, the tithes whereof were so appropriated, formed a distinct parish, which will well enough account for the frequent intermixture of parishes one with another. For if a lord had a parcel of land detached from the main of his estate, but not sufficient to form a parish of itself, it was natural for him to endow his newly-erected church with the tithes of those disjointed lands, especially if no church was then built in any lordship adjoining to those outlying parcels. Thus, parishes were gradually formed, and parish churches endowed with the tithes that arose within the circuit assigned. But some lands, either because they were in the hands of irreligious and careless owners, or were situate in forest and desert places, or for other more unsearchable reasons, were never united to any parish, and therefore continue to this day extra-parochial; and their tithes are now, by immemorial custom, payable to the King instead of the bishop, in trust and confidence that he will distribute them for the general good of the church."

The precise boundaries of parishes depend entirely upon ancient and immemorial custom 3; *Burn, Ecc. L.* 62; and hence it is, that in cases where they are doubted or disputed, the question cannot be determined by the ecclesiastical court, for that court has no jurisdiction to try a prescription or custom, but it must be decided by the temporal courts. *Duke of Rutland v. Bagshawe et al.*, 19 Law J. 234. *Dolby v. Remington*, 9 Q. B. 196. And in order to preserve the evidence of such custom, by reputation, perambulations of the boundaries are very generally made in most of the parishes



in England, in Rogation week in each year; and the parishioners, or chief inhabitants, headed as they often are by the curate, may justify entering and going over a man's land for that purpose. *Goddard v. Michel*, Cro. El. 441. But an entry into a house cannot be justified unless it stands on the boundary line. *Taylor v. Devey*, 7 A. & E. 412. In the absence of other evidence the route so perambulated is followed as the true boundary. *M'Canman v. Sinclair*, 28 L. J. M. C. 247. By the General Inclosure Act, 41 Geo. 3, c. 109, s. 3, authority was given to the commissioner or commissioners acting under any Inclosure Act, if the boundaries of the parish in which the land to be inclosed was situate, or of any adjoining parish, should appear not to be sufficiently ascertained and distinguished, to inquire by the testimony of witnesses, and to ascertain, set out, determine, and fix the same; and the boundaries so ascertained and established should thenceforth be deemed the boundaries of such parish. See *R. v. St. Mary in Bury St. Edmunds*, 4 B. & A. 462. Many other statutes have passed subsequently giving similar powers. 3 & 4 Vict. c. 81. ss. 2, 3. 8 & 9 Vict. c. 118, s. 39. 12 & 13 Vict. c. 83. 15 & 16 Vict. c. 79. So, by stat. 2 & 3 Vict. c. 62, s. 34, the tithe commissioners were empowered, where the boundaries of a parish are in doubt or dispute before them, either to ascertain the old boundaries, or to set out and define a new boundary; "and the boundary line so ascertained or newly defined, shall thenceforward be the boundary line of the said parish." See *R. v. Madeley*, 15 Q. B. 43. *R. v. Hobson*, 19 L. J. 262, Q. B. See also, 3 & 4 Vict. c. 15, s. 28. 9 & 10 Vict. c. 73, s. 21. By the County Rate Act, 15 & 16 Vict. c. 81, s. 40, the justices in quarter sessions are enabled to inquire into and fix the boundaries of "counties, ridings, divisions, and parts of counties, and other places of distinct and separate jurisdiction;" but no authority is given to them to inquire into or fix the boundaries of parishes. By 17 Geo. 2, c. 37, where there is a doubt as to the parish in which waste lands which have been drained are situated, they were to be taken to belong to the nearest parish, and if disputed, the justices at quarter sessions were to give a final determination.

*Reputed parishes.*] Some districts are so situated that it is difficult to say whether each is a distinct parish, or is part only of a parish; but if from ancient times two or more districts have been treated as one parish, then they are called a reputed parish. If they were so known at the time of the stat. 43 Eliz. c. 2, they will continue to be so now. The question sometimes arises in questioning a poor rate which has been made for both districts, or appointing separate overseers for each district, when it is a question for the court to consider

whether and how far all the characteristics of a separate parish have attached to each district for a long series of years. *Sharpley v. Umblethorpe*, 3 E. & B. 906. *R. v. Tomblason*, 27 J. P. 150.

*Extra-parochial places.*] There are places, however, not included in any parish, and are therefore termed extra-parochial. These in some instances have had overseers appointed for them, under stat. 13 & 14 C. 2, c. 12, s. 21, and maintain their own poor; they are liable to be rated to the county rate, by stat. 55 Geo. 3, c. 51, s. 1; their tithes belong to the crown (2 *Inst.* 647); and where they consist of wastes or marsh lands, which have been improved and drained, they may be assessed to all parochial rates in the parish next adjoining. 17 Geo. 2. c. 37.

Such a place for the purposes of the poor rate, the county police, or borough rate, the burial of the dead, the removal of nuisances, the registration of voters, and of births and deaths, is deemed a parish, and the justices of the peace having jurisdiction, may appoint overseers of the poor therein. 20 Vict. c. 19, s. 1. If the inhabitants, holding two-thirds in value of the property, agree with a neighbouring parish on the subject, the justices at quarter sessions, or recorder, may annex the extra-parochial place to such parish, and then it shall be deemed for all purposes a part of such parish. 20 Vict. c. 19, s. 4. And provision is made for due publication of banns of marriage in any church that happens to be in an extra-parochial place. *Id.* ss. 9, 10. If the extra-parochial place has no inhabitants, it is deemed to be attached to the adjacent place having the largest common boundary with it. *Id.* s. 6. *R. v. Gee*, 28 L. J. Q. B. 298. The Act 20 Vict. c. 19, had no retrospective operation. *R. v. St. Sepulchres*, 28 L. J. M. C. 187.

*Populous parishes.*] As many parishes in populous places have become too large and unwieldy for ordinary purposes of ecclesiastical management, and have outgrown the original theory, that each parish was sufficient for one incumbent, it has become necessary in modern times to subdivide many of the largest parishes in cities and towns, at least for ecclesiastical purposes. At a very early period this want was endeavoured to be supplied by chapels of ease, where divine service, and in some instances the rites of sacrament and burial, might lawfully be celebrated in the same way as in the parish church. Some of these chapels were private, being designed only for the use of some individuals of rank, others were public, being designed for the use of the inhabitants of a particular district, who lived at a distance from the mother

church, and were called chapels of ease. Some of these were used for divine worship only; others were used for worship and for the celebration of the rites of the church. As to these, the nomination is in the incumbent of the mother church, except he and the patron and ordinary have otherwise expressly agreed. *Farnworth v. Bishop of Chester*, 4 B. & C. 568. *Duke of Portland v. Bingham*, 1 Hagg. 168. And the inhabitants are not deprived of their right to resort to the mother church, and are generally still bound to contribute to its repair.

There were also some chapels called free chapels, which were originally founded by the crown, and exempt from the visitation of the ordinary. 1 *Burn. Ecc. L.* 298. There are also proprietary chapels, so called because they have been built by individual proprietors, and are still their property, and to a certain extent minister to their private profit. *Moysey v. Hilcoat*, 2 Hagg. 80. As to these, the proprietors have the exclusive right of possession, and may exclude such portion of the public as they think fit. *Bosanquet v. Heath*, 25 J. P. 20. These slight additions were insufficient to keep pace with the growth of population, and at last the legislature began to set about a systematic extension of church accommodation.

*Church Building Acts.*] In 1818 the legislature, by the Act 58 Geo. 3, c. 45, appointed certain persons commissioners for building new churches, who were authorized to examine as to the church accommodation of large parishes, and to assist the parishioners or subscribers with grants or loans of money. A variety of subsequent statutes followed with a view to continue and enlarge these powers, containing a great variety of provisions for the purpose of creating ecclesiastical districts out of overgrown parishes, with new churches, and those powers were recently transferred to the ecclesiastical commissioners, a corporate body created by the stat. 6 & 7 Will. 4, c. 77, for more extensive purposes connected with the management of church property throughout England and Wales, the subdivision of dioceses, and the reform of cathedral institutions; some of the series of Acts are known as the New Parishes Acts. 6 & 7 Vict. c. 37. 7 & 8 Vict. c. 94. 19 & 20 Vict. c. 104.

*Ecclesiastical district parishes.*] By 58 Geo. 3, c. 45, power was given to commissioners to divide any parish into two or more distinct and separate parishes, and which were to become rectories, vicarages, or perpetual curacies like the original parish, and the tithes of such district to belong to the incumbent of such district respectively, and banns of marriage, christenings, and churchings should take place in such district

parishes as in the original parish. But no such division was to affect poor or other parochial rates. *Id.* s. 81. By sect. 70, the repairs of all such district churches or chapels should be made by the districts to which they respectively belonged, by rates to be raised within the district, in like manner as in the case of repairs of churches by parishes, and every such district shall be deemed in law a separate and distinct parish for that purpose, and the repairs of all chapels not made district churches shall be made by the parish in or for which the chapels shall be built. By sect. 71, every such district shall remain subject for twenty years from the consecration of the district church or chapel to the repair of the original parish church, and be deemed part of the original parish for all purposes of such repairs, and the making and levying of rates for that purpose, and after such twenty years the parish church shall be repaired by the district of the parish left as belonging to it after the other divisions are made, and each district shall for ever after repair its own church, as if a separate parish.

The 59 Geo. 3, c. 134, s. 6, reciting that a considerable population was frequently collected together at the extremities of and locally situate in parishes or extra-parochial places contiguous to each other, at a distance from the respective churches or chapels of such respective parishes or extra-parochial places, enacted that the commissioners, with consent of the bishop and patron, might unite and consolidate such contiguous parts of such parishes into a separate and distinct district for all ecclesiastical purposes, and to cause the district to be named and marked out, and enrolled in the High Court of Chancery, and to cause chapels to be built, and to constitute any such district a consolidated chapelry, and a spiritual person to have cure of souls in such district, and the right of presentment and appointment should belong to the patrons of the original parish, or should be varied as agreed between the several patrons, with the approbation of the commissioners.

The principle of these Church Building Acts is not to interfere with the old parish for civil purposes, but merely to carve out a new district for ecclesiastical purposes. Thus, though the churchwardens of a district church may make a rate for the repair of the district church and the expenses of divine service upon the parishioners of such district, (*R. v. Judge of Consistory Court*, 31 L. J. Q. B. 106,) yet the vestry of the old parish may treat the original parish as one for civil purposes, such as the purpose of a burial board. *R. v. Walcot Parish*, 31 L. J. M. C. 217. And the parishioners residing in the district may vote for the election of churchwardens for the old mother parish. *R. v. Stevens*, 27 J. P. 437.

*New Parishes Acts.*] By the 6 & 7 Vict. c. 37, after reciting that it is expedient to make better provision for the spiritual cure of populous parishes, the ecclesiastical commissioners were empowered to borrow from the governors of Queen Anne's bounty a sum of 600,000*l.*, and assist in creating separate districts for ecclesiastical purposes, and with consent of the bishop, to set out such district. A minister is to be nominated, with an income of not less than 100*l.* a year, and the patronage given to any persons on condition of their contributing to the permanent endowment of such minister, or towards providing a church or chapel for the district. Until a church is provided the bishop may license a building for performance of divine service; *Id.* s. 13; and may license a minister to perform pastoral duties, with the exception only of burials and marriages, and he shall have the cure of souls in such district, independently of the incumbent of the parish. *Id.* s. 11. After a church is provided the district will become a new parish for ecclesiastical purposes, and it shall be lawful to solemnize marriages, baptisms, churchings, and burials therein. *Id.* s. 15. And the minister shall, after license by the bishop, be perpetual curate thereof, and shall be endowed with an income of not less than 150*l.* per annum; and two churchwardens shall be annually chosen, charged with all the duties except those of overseers of the poor. *Id.* s. 17.

By the stat. 19 & 20 Vict. c. 104, the ecclesiastical commissioners may declare a district without providing a permanent endowment if from other sources an adequate maintenance is expected. *Id.* s. 3. All endowments are to be settled by deed to the use of the incumbent for the time being of the church or chapel, &c., and his successors for ever. *Id.* s. 23. Where a parish has been divided into two or more distinct and separate parishes, it shall be lawful, with the consent of the respective patrons and incumbents, to separate and divide the glebe lands, tithes, rentcharges, and other endowments. *Id.* s. 26. The freehold of the site of the new parish church, and of the churchyard, burial ground, and vaults, &c., and the house of residence, and all lands, tithes, tenements, hereditaments, and other endowments belonging to such church, shall be vested in the incumbent and his successors for ever. *Id.* s. 10. The commissioners, with consent of the bishop, may authorize the publication of banns and the solemnization of marriages, baptisms, churchings, and burials, and the fees thereof to be payable to the incumbent of such district. *Id.* s. 11. But the right of the then incumbent of the parish church to these fees may be reserved. Sect. 12. The patronage of the new church may be assigned or conferred on the party who contributed the funds, under certain conditions. *Id.* ss. 16, 17, 18, 21.

*Rights of incumbents of new parishes.]* It shall be lawful for the commissioners in the scheme for constituting any district, to specify some existing or intended church within the district as the parish church of such district, and immediately upon the issuing of the order of Her Majesty in council ratifying such scheme, such district shall become and be a new parish, and such church, when consecrated, the church thereof, and the incumbent of such church the incumbent thereof, in the same manner, and to the same extent, to all intents and purposes, as is contemplated with respect to new parishes formed under the Acts, and to the churches and incumbents thereof respectively; and the incumbent of such church shall be liable to the performance of all pastoral duties within the limits of such new parish. 19 & 20 Vict. c.104, s.2. Where-soever or as soon as banns of matrimony and the solemniza-tion of marriages, churchings, and baptisms according to the laws and canons in force in this realm are authorized to be published and performed in any consecrated church or chapel to which a district shall belong, such district not being at the time of the passing of this Act a separate and distinct parish for ecclesiastical purposes, and the incumbent of which is by such authority entitled for his own benefit to the entire fees arising from the performance of such offices, without any reservation thereof, such district or place shall become and be a separate and distinct parish for ecclesiastical purposes, such as is contemplated in the Act, and the church or chapel of such district shall be the church of such parish, and all and singular the provisions of the said firstly and secondly recited Acts (as amended by this Act) relative to new parishes, upon their becoming such, and to the matters and things conse-quent thereon, shall extend and apply to the said parish and church as fully and effectually as if the same had become a new parish under the provisions of the said last-mentioned Acts. *Id.* s. 14. The incumbent of every new parish created or hereafter to be created pursuant to the provisions of the Acts or of this Act shall, saving the rights of the bishop of the diocese, have sole and exclusive cure of souls and the exclusive right of performing all ecclesiastical offices within the limits of the same, for the resident inhabitants therein, who shall for all ecclesiastical purposes be parishioners thereof, and of no other parish, and such new parish shall, for the like purposes, have and possess all and the same rights and privileges, and be affected with such and the same liabilities, as are incident or belong to a distinct and separate parish, and to no other liabilities: provided always, that nothing herein contained shall be taken to affect the legal liabilities of any parish regulated by a local Act of Parliament, or the security for any loan of money legally borrowed under any Act of Parliament

or otherwise. *Id.* s. 15. It shall be lawful for the commissioners, by the authority aforesaid, and subject to such consents as are hereinafter mentioned, to divide any parish into two or more distinct and separate parishes for all ecclesiastical purposes whatsoever, and to fix and settle the respective proportion of tithes, glebe lands, and other endowments which shall arise, accrue, remain, and be within each of such respective divisions, according as by the like authority shall be deemed advisable; and the order made by Her Majesty in council, ratifying the scheme for such division, shall be good and valid in law for the purpose of effecting the same; and such scheme shall set forth the particular expediency of such division, and how far it may be necessary in consequence thereof to make any alteration in ecclesiastical jurisdiction, and how the changes consequent upon such division in respect of patronage, rights of pew-holders, and other rights and privileges, glebe lands, tithes, rentcharges, and other ecclesiastical dues, oblations, offerings, rates, and payments, may be made with justice to all parties interested; and such scheme shall also contain such directions and regulations relative to the duties and character of the incumbents of the respective divisions of such parish, and to the performance of the offices and services of the church in the respective churches thereof, and to the fees to be taken for the same respectively, and to any other matter or thing which may be necessary or expedient by reason or in consequence of such change: provided always, that such division shall be made in the following cases with the following consents only: that is to say, in the case of a benefice in the patronage of the crown, or in the chancellor of the duchy of Lancaster for the time being, or of the Duke of Cornwall, or of any archbishop or bishop, or of any lay or ecclesiastical corporation aggregate, or of a benefice in private patronage, with the consent of the patrons thereof respectively, with the consent of the bishop of the diocese, such consents to be testified as aforesaid: and provided also, that no such provision shall take effect until after the first avoidance then next ensuing of the church of the parish to be so divided, unless with the consent in writing of the actual incumbent thereof. *Id.* s. 25.

*Parish books, records, &c.*] In most parishes ancient records exist, consisting of the accounts of previous officers, the minutes of vestry meetings, and other documents connected with parish affairs. The common law did not require written records to be kept, but it was the practice to do so, and the stat. 58 Geo. 3, c. 69, recognized this rule, and made it the duty of the officers to keep written records. By sect. 2,

minutes of the proceedings and resolutions of every vestry shall be fairly and distinctly entered in a book to be provided for that purpose by the churchwardens and overseers of the poor, and shall be signed by the chairman, and by such other inhabitants present as shall think proper to sign the same. And by sect. 13, as well the books hereby directed to be provided and kept for the entry of the proceedings of vestries, as all former vestry books, and all rates and assessments, accounts and vouchers of the churchwardens, overseers of the poor, and surveyors of the highways, and other parish officers; and all certificates, orders of courts and of justices, and other parish books, documents, writings, and public papers of every parish, except the registry of marriages, baptisms, and burials, shall be kept by such person and persons, and deposited in such place and manner as the inhabitants in vestry assembled shall direct. The due keeping of the books is enforced by penalties against the officers, as will afterwards appear. See *post*, "Vestries."

*Office for parish books and business.*] Great inconvenience having often been felt by overseers and others in not having a separate office for the transaction of parish affairs, this may now generally be remedied.

The overseers of any parish in England the population whereof shall exceed 4,000 persons, according to the census for the time being, with the consent of the vestry, called after due notice, and with the consent of the poor law board, signified by an order under their seal, may hire any room, or purchase or take upon lease or exchange any land or building, or sell land belonging to such parish, and invest the proceeds of such sale in the purchase of other land and building, or erect a suitable building on any land acquired as aforesaid, for the purpose of an office for the transaction of the business of the parish. 24 & 25 Vict. c. 125.

The land for such purpose may be acquired compulsorily under the Lands Clauses Act. And all lands and premises which shall be so purchased or taken on lease or exchange by the overseers of any parish shall be conveyed, demised, and assured to such overseers and their successors, in trust for the purposes aforesaid. And the yearly rent reserved by any lease shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of any such parish, and shall be paid by the overseers as aforesaid of such parish as such rent becomes payable. And if at any time any such rent be not paid within thirty days after it so becomes payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the overseers as aforesaid, with costs of suit, by



action of debt in any court of appropriate jurisdiction, or may levy the same by distress of the goods and chattels of any of the overseers as aforesaid. And such overseers may provide the requisite furniture and fittings of such room or such building, and appoint and pay out of the poor rate such person to take care thereof, or of any vestry room provided under the authority of the 13 & 14 Vict. c. 57, and to aid in the ordinary business of the parish, as the vestry shall authorize and the poor law board shall approve; and every such building and vestry room shall be warmed and lighted, and with its furniture shall be kept in good condition and repair at the cost of the poor rate. 24 & 25 Vict. c. 125, s. 1.

The overseers of any parish may, with the consent of the vestry, provide proper depositories of all the documents, books, and papers belonging to such parish for which no provision is otherwise made by law, and charge the costs thereof upon the poor rate. *Id.* s. 2.

*Parliamentary returns as to parish and local rates, &c.]*

The legislature for various purposes requires correct statistical information as to all local rates and taxes levied for local government and improvements, and has accordingly provided by statute for correct returns being made on these subjects. Hence, the clerk to any corporation, justices, commissioners, district or other board, vestry, inspectors, trustees, or other body or persons authorized to levy or to order to be levied, any of the rates, taxes, tolls, or dues mentioned in the schedule to this Act, or any other compulsory rates, taxes, tolls, or dues in England (other than such as are levied for the public revenue of the United Kingdom), shall make a return of the sums levied or received by or in respect of such rates, taxes, tolls, and dues, and of the expenditure thereof, to one of Her Majesty's principal secretaries of state in the month of June in every year. 23 & 24 Vict. c. 51, s. 1.

Church rates and chapel rates; whether made by the common law or under the Church Building Acts, or under any other Act of Parliament.

Sewers rate and "General Sewers Tax," and all rates, scots, and taxes levied by courts or commissioners of sewers; whether levied under the Acts of the 3 & 4 Will. 4, c. 22, and 4 & 5 Vict. c. 45, or under any other Act of Parliament, or by charter, usage, or custom.

Rates under the Act for the lighting and watching of parishes. 3 & 4 Will. 4, c. 90.

Rates levied by improvement commissioners or other commissioners, or by any trustees or corporation acting under any local Act for the paving, draining, cleansing, or watching, improvement or regulation, of any town or district.

Rates levied by or under the order of any vestry or district board, under the Act 18 & 19 Vict. c. 120, for the better local management of the metropolis.

Tolls and dues levied under the authority of parliament in respect of markets, bridges, or harbours. *Id.* sched.

*Returns, when and by whom.*] Such returns shall be made for the latest period of twelve months preceding the month of June in each year for which the accounts of the corporation, justices, commissioners, board, vestry, inspectors, trustees, or other body or persons, shall be made up, and shall show the amounts levied and expended respectively, with such other particulars and in such form as shall from time to time be ordered by such secretary of state. 23 & 24 Vict. c. 51, s. 2.

Where no clerk is appointed or acting, the treasurer or other officer keeping the accounts of the receipts and expenditure of the corporation, justices, commissioners, board, vestry, inspectors, trustees, or other body or persons by whom any rates, taxes, tolls, or dues hereinbefore mentioned are levied or ordered to be levied shall make the returns in relation thereto; and where any such rates, taxes, tolls, or dues, are levied and expended or to be accounted for by churchwardens, chapelwardens, or any officers or persons not authorized to act as a board, such returns as hereinbefore mentioned in respect of such rates, taxes, tolls, or dues, and the expenditure thereof, shall be made by such churchwardens, chapelwardens, or other officers or persons, and they shall be severally liable in respect of any neglect to make the same. *Id.* s. 3.

Any clerk, treasurer, churchwarden, officer, or other person required as aforesaid to make such return, who neglects so to do in the month of June in any year shall be liable to a penalty not exceeding 20*l.* for every such offence, to be recoverable on summary conviction thereof before two justices. *Id.* s. 4.

Where any annual return is now by law required to be made to the secretary of state, or to any public department, under any Act of Parliament, this Act shall not render necessary any further or other return in respect of the same matters: provided always, that the said secretary of state may, by his order published in the London Gazette, direct that all or any of such returns now required as aforesaid shall in future be made under this Act, and shall be subject to the provisions and penalties thereof. *Id.* s. 5.

The said secretary of state shall every year cause the returns transmitted to him under this Act to be abstracted, and the abstract thereof to be laid before both houses of parliament. *Id.* s. 6.

*Parish improvements.*] Whenever it is desirable that some public local improvement should be made in a parish, this may be effected as follows by a recent Act, 23 & 24 Vict. c. 80 :—

“Whereas it is expedient that facility should be given for the purpose of effecting local improvements beneficial to the health and comfort of the people:” be it therefore enacted, it shall be lawful for the ratepayers of any parish maintaining its own poor, the population of which, according to the last account from time to time taken thereof by the authority of parliament, exceeds 500 persons, to purchase or lease lands, and to accept gifts and grants of land, for the purpose of forming any public walk, exercise or play ground, and to levy rates for maintaining the same, and for removal of any nuisances or obstruction to the free use and enjoyment thereof, and for improving any open walk or footpath, or placing convenient seats, or shelters from rain, and for other purposes of a similar nature. *Id.* s. 1.

This Act may be adopted for any borough, or for any parish having a population of 500 or upwards, (according to the last account for the time taken by authority of parliament,) in the same manner as the Act of the ninth and tenth Victoria, chapter seventy-four, may be adopted in such borough or parish. *Id.* s. 2. See *post*, “Baths, &c.,” p. 31.

Where the Act is adopted in a borough or in such a parish, the provisions of the Act of the ninth and tenth Victoria, chapter seventy-four, for the purposes below specified applicable in the like cases where that Act is adopted, shall take effect for the purposes of this Act, viz., all the provisions concerning

1. The authority by which and the manner in which the Act is to be carried into execution :
2. The mode of providing the expenses of carrying the Act into execution (excluding the provisions for borrowing money for such expenses) :
3. The appointment (in the case of a parish) of commissioners, the tenure of office and procedure, and the audit of their accounts :
4. The powers of the councils and commissioners for the purposes of the Act (except the powers of borrowing money). *Id.* s. 3. See *post*, pp. 31—38.

*Rate for public improvement.*] After the adoption of this Act it shall be lawful for the ratepayers in meeting assembled to rate such parish to a separate rate, to be called the “— Parish Improvement Rate:” provided that such rate be agreed to by a majority of at least two-thirds in value of the ratepayers assembled at such meeting. *Id.* s. 4.

Corporate bodies shall be allowed to attend meetings to be held as aforesaid and to vote thereat by some person to be deputed by them for that purpose under their corporate seal. *Id.* s. 5.

Provided always, that previous to any such rate being imposed a sum in amount not less than at least one-half of the estimated cost of such proposed improvement shall have been raised, given, or collected by private subscription or donation. *Id.* s. 6.

Such rate shall not exceed sixpence in the pound. *Id.* s. 7.

*Libraries for parish.]* Though the establishment of public libraries is not, strictly speaking, due to parishes as such, still the promotion of such an improvement is due to the public spirit which springs out of the parochial principle, and the subject deserves to be shortly noticed here. In all boroughs of which the population, according to the latest census, exceeds 10,000, the mayor may, on request of the town council, after due notice, call on the burgesses to meet and vote as to whether the Libraries Act, 13 & 14 Vict. c. 65, shall be adopted in such place. For this purpose all the burgesses on the roll are entitled to vote. If two-thirds vote in favour of the Act being adopted, then the town council may purchase or rent buildings for the purpose of forming public libraries or museums of art and science, or both, and to erect, alter, and extend any buildings for such purpose, and to maintain and keep the same in good repair. For the money borrowed, which may be done with the approval of the treasury, the town council may levy, as part of the borough rate, or separately, a rate on all property rateable to the borough rate, but which rate shall not exceed one halfpenny in the pound in any one year. *Id.* s. 3. Out of the monies so raised the town council may appoint officers and provide all things necessary for the convenient and useful occupation of the premises, and for the admission of visitors. The committee of management is to be appointed by the town council. *Id.* s. 4. All the lands and buildings, books, maps, &c. shall be vested in the mayor, aldermen, and burgesses of the borough. *Id.* s. 6. It is essential that admission to such libraries and museums shall be free of charge. *Id.* s. 7. If at the vote of burgesses the motion for adoption of the Act is rejected, the subject cannot be renewed till two years afterwards. *Id.* s. 8. Further facilities for the establishment of institutions of this kind, as well as all institutions connected with literature, science, and the fine arts, were afforded by the statute 17 & 18 Vict. c. 112. It may be also here stated that societies established exclusively for purposes of science, literature, or the fine arts, where such societies are supported wholly or

in part by annual voluntary contributions, and shall not, and by their laws may not make any dividend, gift, division, or bonus in money between their members, shall not be liable to be rated to any county, borough, parochial, or other local rates. 6 & 7 Vict. c. 36. To obtain this exemption a copy of the rules for the management of the society shall be sent to the registrar of friendly societies.

*Parish property.*] The goods of the parish church, as will be afterwards seen, vest in the churchwardens and their successors in office.

But the property in all goods, furniture, provisions, clothes, linen, and wearing apparel, tools, utensils, materials, and things whatsoever, had, bought, procured or provided for the use of any parish, township, hamlet, or place, are vested in the overseers of such parish, &c., for the time being and their successors in office, who are empowered to bring any action, or prefer any bill of indictment, against any person who shall steal, take, buy, or receive the same. 55 Geo. 3, c. 137, s. 1. So goods provided by parish officers for the use of the poor, may, in any indictment, or in any information or complaint for a summons, conviction or order, be described as the goods of the churchwardens and overseers of the poor of the parish. 7 Geo. 4, c. 6, s. 16. 11 & 12 Vict. c. 43, s. 4. And all materials, and tools provided for the repair of highways, at the expense of parishes or other districts in which such highways may be situate, may in any such indictment, information, or complaint be described as the property of the surveyor or surveyors of such highways. 7 Geo. 4, c. 64, s. 16. 11 & 12 Vict. c. 43, s. 4.

So all workhouses or lands purchased by churchwardens and overseers of the poor, by authority of stat. 59 Geo. 3, c. 12, shall be conveyed to them and their successors, in trust for the parish; and they shall take and hold the same as a body corporate. 59 Geo. 3, c. 12, s. 17.

As to parish offices for business, see *ante*, p. 11.

As to recreation grounds, see *post*, p. 21.

*Sale of parish property.*] By stat. 59 Geo. 3, c. 12, s. 9,—22 Geo. 3, c. 83, s. 43,—and 1 & 2 Geo. 4, c. 56, workhouses and lands, &c., may be sold by the overseers, &c., and the fee-simple therein conveyed to the purchaser. And by stat. 5 & 6 Will. 4, c. 69, s. 3, the guardians of any parish or union, and the overseers of any parish not under the management of a board of guardians, are empowered to sell, exchange, let, or otherwise to dispose of workhouses, tenements, buildings, lands, effects, or other property belonging to any such parish or union, and to convey, assign, or transfer the same accord-

ingly to the purchasers or parties exchanging, as they shall direct; and, in case of a sale, to apply the produce in manner therein mentioned; provided that no such sale or exchange, or letting, shall take place, except with the consent of a majority of the ratepayers of such parish, and of the owners of property therein, entitled to vote under stat. 4 & 5 Will. 4, c. 76, assembled at a meeting to be duly convened and held for the purpose. See also stat. 5 & 6 Vict. c. 18. As to grants of parish lands for recreation grounds, see *post*, p. 21; and as to the sale or hire of buildings for a parish office, see *ante*, p. 11.

The following are the necessary forms:—

*Notice of Meeting to consent to the Sale of Work-houses, &c.*

Parish of —, }  
 — Union, }  
 County of —.

*Notice is hereby given, that a meeting of the owners of property in this parish, legally entitled to vote, in person or by proxy, and of the ratepayers therein, will be held at —, in the parish, on\* —, the — day of —, at — in the forenoon, for the purpose of giving the consent of such meeting to the guardians of the — union selling the following premises, that is to say, —, under the provisions of an Act passed in the sixth year of the reign of His late Majesty King William the Fourth, intituled "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales," in such manner, and subject to such rules, orders, and regulations, touching such sale, and the conveyance of such property, and the application of the produce arising therefrom, for the permanent advantage of this parish, as the poor law board shall in that behalf direct.*

*Dated this — day of —, 186—.*

A. B. Minister.  
 C. D. }  
 E. F. } Churchwardens.  
 G. H. }  
 I. J. } Overseers.

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\* The meeting cannot be legally held earlier than the Thursday after the Sunday on or before which the notice is given,—as three clear days must intervene between the Sunday on or before which the notice is given and the day of meeting.

*Request to the Guardians to apply to the Poor Law Board to consent to Sale.*

Parish of —, }  
 — Union, }  
 County of —, }

*We, the undersigned majority of the parish officers, and we, the undersigned inhabitants of the parish of —, in the — union, in the count— of —, request you, the guardians of the poor of the said union, to apply to the poor law board for their consent to the sale of the under-mentioned premises, belonging to the said parish, and for their directions as to such sale, and for the application of the produce thereof to the permanent advantage of the said parish.* [Here describe the premises accurately, but concisely, stating whether the tenure is freehold, customary freehold, copyhold or leasehold, and whether subject to the payment of any quit or other rent. If any buildings are proposed to be sold, and it is considered desirable that the materials should be sold separately from the site, the circumstances should be stated. State also, when and how the parish became possessed of the property, and the trusts, if any exist, which affect the same. If the property has been built upon waste land, state whether it was so built with the consent of the lord of the manor, and the date of such consent.

*The said premises cannot conveniently be used for the purposes of the said union, and we are of opinion that the sale thereof will be of permanent advantage to the said parish, for the following reasons.* [Here describe their condition, whether in a state of good repair or dilapidated; also in whose occupation, whether in that of paupers or not, or empty; and any other circumstances that may enable the guardians to judge of the desirableness of selling the property.]

*The said premises are estimated to be of the value of —, and yield an annual rent of —. We are also of opinion that it will be advisable to apply the proceeds of the sale, after deducting the expenses thereof, in the following manner, to the permanent advantage of the parish.* [Say whether as contribution to the union workhouse or to what other purpose; if to pay a debt, say when it was contracted, by whom, for what purpose, and how such debt is secured; if to discharge a mortgage, state by whom and when created, the

*Parish Property.*

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name of the mortgagee, and to what objects the money was applied.]

*Dated this — day of —, 186—.*

} *Churchwardens.*

} *Overseers.*

} *Inhabitants.*

*Request to the Poor Law Board to consent to Sale.*

*The guardians of the poor of the — union, being fully satisfied that the sale of the premises described in the annexed application will be of permanent advantage to the parish of —, do hereby request the poor law board to consent that the said guardians may sell the said premises, under the provisions of an Act passed in the sixth year of the reign of His late Majesty King William IV., intituled "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales," and that the said poor law board will issue such rules, orders, or regulations touching such sale, and the conveyance of the said premises, and the application of the produce thereof for the permanent advantage of the said parish, as they may see fit in that behalf.*

*In testimony whereof the said guardians have herewith affixed their common seal, this — day of —, 186—.*

*Union  
Seal.*

*Witness,*

*—, Clerk to the board of guardians.*



*Declaration of Possessory Title.\**

— Parish. }  
 — Union. }  
 — County. }

*I, —, of —, [insert the christian and surname, and place of abode, and quality of the declarant at full length; if the declarant believe that he was born at that place, state the fact], do solemnly and sincerely declare that I am — years of age, and that I have resided at — for — years last past.*

*That I well know the property proposed to be sold by the guardians of the poor of the — union, with the approbation of the poor law board, consisting of — [describe the property in the terms used in the former papers, and if there be not here space enough, annex a schedule], in the parish of —.*

*That for the whole period of — years last past [the period of possession must not be less than twenty years last], during which I have known the same, the said premises have been in the possession of the churchwardens and overseers of the poor of the said parish of —.*

*That the said buildings have been from time to time repaired out of the poor rates of the said parish of —. [If the declarant have held the office of overseer, and disbursed money in repairs, state the fact. In some cases the annexation of extracts from the parish accounts and books may conduce to establish this and the following fact.]*

*That the churchwardens and overseers of the said parish have from time to time let the said premises, and placed therein such of the paupers of the said parish, as they or the parochial vestry thought fit; and that [if rents were received by the overseers, state the fact.]*

*That I do not know, and have never known or heard of the said premises being subject to any charitable or other trust, or incumbrance.*

*That I do not know, and have never known or heard of any adverse claim having been made by any person, to any part of the said premises, and that I believe the same to be*

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\* This is to be altered according to the state of facts to which the declarant can speak.—It should be carefully read over by or to the declarant, who should not be an illiterate person or a marksman.—Two or more persons may join in the declaration, each speaking to the facts within his knowledge.—If there be any exception of qualification to any of the facts declared, it should be stated in the same paragraph as the fact which it affects.

*the exclusive and indisputable property of the churchwardens and overseers of the said parish.*

*That I verily believe that no deeds or writings relating to the said premises are in the possession, power, or procurement of the parish officers, or do exist.*

*That I verily believe that the said premises are not of leasehold nor of copyhold tenure.*

*And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provision of an Act passed in the 5th and 6th years of the reign of King William the Fourth, intituled "An Act to repeal an Act of the present session of parliament, intituled 'An Act for the more effectual abolition of oaths and affirmations taken or made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits,' and to make provisions for the abolition of unnecessary oaths."*

<i>Declared and signed this — day of —, one thousand eight hundred and sixty—, at —, in the county of —, before me, one of Her Majesty's justices of the peace for —, (or, a master extraordinary in Chancery.)</i>	}	<i>Signature of the Declarant.</i>	}
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*Recreation grounds.]* In order to facilitate and encourage the gift, by benevolent persons, of land in populous places for playgrounds and recreation grounds in parishes, a recent statute, called the Recreation Grounds Act, 22 Vict. c. 27, recited that, whereas the want of open public grounds for the resort and recreation of adults, and of playgrounds for children and youth, is much felt in the metropolis and other populous places within this realm, and by reason of the great and continuous increase of the population and extension of towns such evil is seriously increasing, and it is desirable to provide a remedy for the same; and it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Any lands may be lawfully conveyed to trustees, to be held by them as open public grounds for the resort and recreation of adults, and as playgrounds for children and youth, or other of such purposes, and for any estate, and subject to any reservations, restrictions, and conditions which the donor

or grantor may think fit; but this enactment shall not extend to authorize any lands to be so conveyed for any greater estate or interest than the donor or grantor would, independently of this Act, have power to dispose of. *Id.* s. 1.

It shall be lawful for any person to bequeath any personal property, not exceeding 1,000*l.* in amount, for the purpose of defraying the expenses of purchasing, preparing, maintaining, and preserving such grounds for the purposes aforesaid, and ornamenting the same. *Id.* s. 7.

*Form of conveyance of.]* Any such conveyance of land to trustees may be in the following form, subject to any modification thereof which the case may require:

"I, A. B., do hereby convey and grant to —, as trustees for public ground for the parish [or parishes] of — [*here describe the lands conveyed or granted*], to be held by them as public ground for the purposes of 'The Recreation Grounds Act, 1859.'"

And it is hereby enacted, that the grant or conveyance of such lands shall not require enrolment, nor to be by indenture, and shall be valid, although the donor or grantor shall die within twelve calendar months after the making of such grant, any of the provisions of the Act passed in the ninth year of the reign of King George the Second, chapter thirty-six, to the contrary notwithstanding. *Id.* s. 2.

With respect to lands belonging to any municipal corporation, such grant may be lawfully made by the body corporate, with the consent of the commissioners of Her Majesty's treasury, signified by their executing the deed of conveyance. *Id.* s. 3.

With respect to lands belonging to any parish, such grant may and shall be made by the trustees or feoffees (if there shall be such), or otherwise by the churchwardens and overseers of the parish, in pursuance of a resolution for that purpose of the vestry or other body having the management of the affairs of such parish, passed in meeting duly assembled for the purpose, and with the approbation of the poor law board, to be testified by their seal being affixed to the deed of conveyance. *Id.* s. 4.

*Trustees of.]* With respect to the appointment of trustees for holding any such grounds for the purpose aforesaid, the lord of any manor, or the churchwardens of any parish, or the overseers of the poor of any parish or township, or all or any of such persons to whom lands shall have been conveyed as aforesaid, shall be a body corporate for taking, holding, and disposing of such grounds, and instituting, maintaining, and defending any proceedings relating thereto; but the

management and direction of the same shall be and remain in such persons as may be named in the deed of conveyance thereof; and in case no such persons shall be so named, or there shall be a failure of such managers and directors, the charity commissioners for England and Wales shall have power to settle a scheme for the appointment of the managers and directors. *Id.* s. 5.

The managers and directors may from time to time make and enforce any such byelaws, orders, and regulations for the management, preservation, disposition, and care of the said grounds, and the government of all persons using or frequenting the same, as shall be approved by the said commissioners and in accordance with the conditions of the grant; and no byelaws, orders, or regulations in any manner restricting the public use or enjoyment of the said grounds shall be valid unless sanctioned with such approbation. *Id.* s. 6.

*Protection of ornamental grounds.]* It may be also well to mention that in cities and boroughs provision is made for the better protection and charge of inclosed garden or ornamental grounds, which have been set apart for the use of the inhabitants of any public square, crescent, circus, street, or other public place surrounding or adjoining such gardens or grounds. Where trustees or commissioners have not been invested with the care of the same, or have neglected the same, the metropolitan board of the metropolis, and elsewhere the corporate authorities, may vest the same in a committee of the owners and occupiers of adjacent houses; and the vestry or board of any and every parish or district within which the same or any part thereof is situate shall, from time to time, cause to be raised the sums required by such committee for defraying the expenses of the maintenance and management of such inclosed garden or ornamental ground, or of such part thereof as is situate within their parish or district, by an addition to the general rate, to be assessed on the occupiers of such houses; or if the said owners and occupiers shall not agree, as aforesaid, to undertake the charge of such garden or ornamental ground, the metropolitan board of works, or corporate authority aforesaid, shall within six months after the notice hereinbefore mentioned shall have been put up within the same, or within such further time as the said board or authority may think it expedient to allow for such agreement to be come to, vest the same in such vestries or boards, who shall thenceforth take charge of and maintain the same as an open place or street, in such manner as shall appear to them most advantageous to the public, subject to the approval of the metropolitan board of works or corporate authority, as the case may require. 26 Vict.

c. 13, s. 1. Where such garden or ground is managed by a committee of the inhabitants, such committee may make bye-laws for the management and for the preservation of trees, shrubs, plants, seats, &c., and entered in a book, and after being approved by a superior judge, or by justices in quarter sessions, any person offending against the same may be fined a sum of 5*l.* *Id.* s. 4. And if any person trespass on such ground, or commit a nuisance, or deposit rubbish, or take flowers, &c., any constable may apprehend such person, who may be convicted and fined 40*s.* or fourteen days' imprisonment. *Id.* s. 5.

*Village greens.*] As to the provisions for protecting town or village greens from nuisances and damage, see "*Local Authorities*," *post*.

*Industrial schools.*] Though the subject of industrial schools belongs as much to the county as the parish, yet the subject is one which is mixed up with parish affairs, and naturally occupies the attention of those who are concerned in the parish. The recent statute, called the Industrial Schools Act, 1861, (24 & 25 Vict. c. 113,) repealed the prior Acts, and now regulates the subject. Any benevolent persons in the parish may establish an industrial school, with managers, but in order to put it on the best footing Her Majesty's secretary of state for the home department, hereinafter referred to as the secretary of state, may, upon the application of the managers of any school in which industrial training is provided, and in which children are clothed, lodged, and fed, as well as taught, appoint such persons as he may think fit to examine into the condition of the school, and to report to him thereon, and if satisfied with such report he may by writing under his hand certify that such school is fitted for the reception of such children as may be sent there in pursuance of this Act, and shall cause a copy of the certificate to be sent to the clerk of the peace of the county in which the school is situate, and to the town clerk of every borough within such county. *Id.* s. 4. This certificate may be withdrawn by the secretary of state if dissatisfied with the condition of the school, or the managers may, after six months' notice, resign the certificate.

The guardians of any union or any parish wherein the relief to the poor is administered by a board of guardians, may, if they deem proper, with consent of the poor law board, contract with the managers of any certified industrial school for the maintenance and education of any pauper child. *Id.* s. 8.

*What children may be sent to industrial school.]* Children of the descriptions hereinafter mentioned may be sent to certified industrial schools in pursuance of the provisions of this Act: that is to say,

1. Any child apparently under the age of fourteen years found begging or receiving alms, or being in any street or public place for the purpose of begging or receiving alms:
2. Any child apparently under the age of fourteen years that is found wandering, and not having any home or settled place of abode, or any visible means of subsistence, or frequents the company of reputed thieves:
3. Any child apparently under the age of twelve years who, having committed an offence punishable by imprisonment or some less punishment, ought nevertheless, in the opinion of the justices, regard being had to his age and to the circumstances of the case, to be sent to an industrial school:
4. Any child under the age of fourteen years whose parent represents that he is unable to control him, and that he desires such child to be sent to an industrial school, in pursuance of this Act, and who at the same time gives such undertaking or other security as may be approved by the justices before whom he is brought in pursuance of this Act, to pay all expenses incurred for the maintenance of such child at school:

Provided that no child who, on being brought before the justices, is proved to have been previously convicted of felony, shall be deemed to be within the provisions of this Act. *Id.*

s. 9. Any person may bring such child before the justices, who, on inquiry, may send the child to such school, selecting such school as is in accordance with the religious persuasion of the parent of the child. While the inquiry is pending the justices may order the child to be detained in the workhouse of the parish at the cost of the union.

No child shall in pursuance of this Act be detained against his consent in any certified industrial school after he has attained the age of fifteen years. *Id.* s. 14.

The secretary of state may from time to time, by writing under his hand, remove any child sent to an industrial school in pursuance of this Act from one certified industrial school to another, so that the whole period of the detention of such child at industrial schools be not thereby increased: he may also, in like manner, discharge any child from an industrial school, either absolutely or upon condition of the parent of such child or any near relation undertaking to educate, clothe, and feed him, or entering into such other undertaking as the secretary of state may require. *Id.* s. 15.

On the application of the parent, or of the managers, or of the guardians who may be liable to make any repayment as aforesaid on account of any child, any justices of the county in which the school is situate, if satisfied that a suitable employment has been provided for the child, or that there is otherwise sufficient cause, may discharge the child from the school before the full expiration of the period for which he has been sent there. *Id.* s. 16.

*Maintenance at school.*] The commissioners of Her Majesty's treasury, upon the representation of the secretary of state, may, out of monies provided by parliament, contribute towards the maintenance of any children sent to school in pursuance of this Act, except such children as are sent to school, in pursuance of this Act, at the desire of their parents, and on their representation that they are unable to control them, at such rate per head as may be determined by him, or such portion of the cost as may not be recovered from the parent of the child in manner herein provided, or such other portion as the secretary of state may recommend. *Id.* s. 17.

The justices by whom any child is sent to school in pursuance of this Act, or justices having jurisdiction within the district where the school is situate to which any child is sent in pursuance of this Act, or in which the parent of such child shall reside, upon an application made by any person appointed by the secretary of state for that purpose, or by any agent of such person, shall have authority to make an order on the parent of such child for the payment, either at the time of the child being first sent to school, or at any time during his continuance at school, of the expenses of his maintenance at school to an amount not exceeding 5s. for every week during which the child remains at such school. *Id.* s. 18.

The order made by the justices may specify the time during which the parent is to pay the sums thereby directed to be paid, or it may be indefinite, and until further order; and any justices of the peace having jurisdiction to make such order may from time to time vary the same whenever circumstances require it, on the application either of the parent or of any person appointed by the secretary of state to receive the money, or by the agent of such person, on fourteen days' notice being first given of such application to such person or his agent, or to such parent, respectively. *Id.* s. 19.

*Child absconding from school.*] If any child, whether lodging in the school or elsewhere, before attaining the age of fifteen years, or before being duly discharged, wilfully absconds from the school to which he is sent in pursuance of this

Act, or neglects to attend thereat, or wilfully refuses to conform to the regulations thereof, any justices having jurisdiction in the place in which the school is situate or in which the child is retaken may, by writing under their hands and seals, order him to be sent back to the school, and to be detained there until he attains the age of fifteen years, or for such shorter period as the justices think fit, or, instead of sending him back to such last-mentioned school, the justices may commit him, under the provisions of the Act of the session of the seventeenth and eighteenth years of Victoria, chapter eighty-six, to any reformatory school certified under the said Act. *Id.* s. 20.

Any person who directly or indirectly withdraws a child from the certified industrial school to which he has been sent, previously to his attaining the age of fifteen years or to being duly discharged, or who induces or aids him to abscond, or who knowingly conceals or harbours him, or in any way prevents his return, shall for every such offence incur a penalty not exceeding 5*l.*, or shall be liable, at the discretion of the justices, to be imprisoned for any period not exceeding twenty days. *Id.* s. 21.

*Reformatory schools.*] Though reformatory schools are not necessarily connected with parochial institutions, the subject deserves to be briefly noticed, as the funds are often procured through parochial agency. When a reformatory school has been established, the borough or county justices may make an order for the payment of money in aid of such reformatory school. 20 & 21 Vict. c. 55, s. 1. But such school must have been certified by the secretary of state under the stat. 17 & 18 Vict. c. 86. In schools to which justices order a grant of money on the request of a parent or offender inmate, a minister of the religious persuasion of such offender may at certain fixed hours visit such school. 20 & 21 Vict. c. 55, s. 6. The parent of such offender may be compelled to contribute to the maintenance of the child, and an absconding offender may be punished. The statutes on the subject are 17 & 18 Vict. c. 86. 18 & 19 Vict. c. 87. 19 & 20 Vict. c. 109. 20 & 21 Vict. c. 55.

*Savings banks.*] Though savings banks are not necessarily connected with parochial institutions, it is in practice important for those who are engaged in parish affairs, to know the general law affecting the deposit of small savings. By a recent Act, all the post offices throughout the kingdom may receive deposits when authorized and directed by the post-master-general. 24 Vict. c. 14, s. 1. Every deposit, which must not be less than one shilling, or a multiple of a shilling,



shall be entered at the time in the depositor's book, and the entry attested by him. On demand of the depositor, or party legally authorized by the depositor in a certain form, the authority of the postmaster will be sent to the depositor, who shall be admitted to repayment within ten days at furthest from the demand. *Id.* s. 3. The monies deposited are paid to the commissioners for the reduction of the national debt, and repayment is guaranteed by the treasury. *Id.* s. 6. The rate of interest shall be 2l. 10s. per cent. per annum. *Id.* s. 7. Deposits may be transferred to another post office. The laws relating to other savings banks have been consolidated by the statute 26 & 27 Vict. c. 87.

*Industrial societies.]* Industrial and provident societies are not necessarily connected with parish affairs. It is therefore sufficient to observe that the Industrial and Provident Societies Act, 25 & 26 Vict. c. 87, repealed the previous Act, and now any number of persons not less than seven may establish a society under that Act for the purpose of carrying on any labour, trade, or handicraft, whether wholesale or retail, except the working of mines and quarries, and except the business of banking and of applying the profits for any purposes allowed by the Friendly Societies Acts, or otherwise permitted by law. The society may be registered by the registrar of friendly societies, and a copy of its rules left with him. The Friendly Societies Acts apply to the industrial societies, as regards exemption from stamp duties and income tax, settlement of disputes by arbitration or justices, compensation to members unjustly excluded, power of justices or county courts in case of fraud, and as to the jurisdiction of the registrar. 25 & 26 Vict. c. 87, s. 15. The liability of members is restricted by the Act.

*Friendly societies.]* Friendly societies are not strictly speaking parochial institutions, though it is generally useful for those who are mixed up with parish affairs to know something about them. The laws as to friendly societies were consolidated by the stat. 18 & 19 Vict. c. 63, amended by 21 & 22 Vict. c. 101, and 23 & 24 Vict. c. 58. The object of friendly societies is to raise by voluntary subscriptions, with or without donations, a fund for any of the following objects:—1. To insure a sum of money to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of a wife or child of a member. 2. For the relief or maintenance of the members, their husbands, wives, children, brothers or sisters, nephews or nieces, in old age, sickness, or widowhood, or the endowment of members, or nominees of members at any age. 3. For any purpose which shall be authorized

by one of Her Majesty's principal secretaries of state. But no member shall subscribe or contract for an annuity exceeding 30*l.* per annum, or a sum payable on death, or on any other contingency exceeding 200*l.* 18 & 19 Vict. c. 63, s. 9. A society is constituted when the rules have been transmitted to the registrar and his certificate has been obtained. No sum is to be paid on the death of a child under ten years of age for funeral expenses, except on production of a copy of the entry in the register of deaths, signed by the registrar, and a certificate of the medical practitioner attending, or the medical officer of the union or parish, stating the cause of death; and the whole amount of funeral expenses of a child under the age of five years, shall not exceed 6*l.*, nor, if between five and ten years, shall exceed 10*l.* 18 & 19 Vict. c. 63, s. 10. 21 & 22 Vict. c. 101, s. 2. When on the death of a member, a sum not exceeding 50*l.* is payable, the trustees of the society may pay the same to the person directed by the rules or nominated by the deceased, or if no nominee, to the person entitled under the statute of distributions, without the necessity of any letters of administration. 18 & 19 Vict. c. 63, s. 31. If a member belongs to more than one society he cannot receive more than 200*l.* from the whole collectively, nor more than 30*l.* from the whole in one year. 18 & 19 Vict. c. 63, s. 38. The rules of these societies are all important in case of any dispute or difference between the members and the society, and generally provide for a mode of settling such disputes, by referring to an arbitrator or to a justice of the peace, which mode must be followed in the first instance, failing which the county court of the district has jurisdiction. 18 & 19 Vict. c. 63, s. 41.

*Registration of births, deaths, and marriages.*] Though the registration of births, deaths, and marriages is not performed by parochial officers, or persons appointed by the parishioners, still the practice occupies so prominent a place in the affairs of the parish that it requires special notice here. The five matters usually registered in England are birth, baptism, marriage, death, and burial; and of these the births and deaths are registered exclusively by the registrars appointed under the recent statutes. 6 & 7 Vict. cc. 85, 86. 1 Vict. c. 22. 3 & 4 Vict. c. 92. 19 & 20 Vict. c. 119. Marriages are registered partly by these registrars, and partly by parish ministers. Parochial and other ministers keep registers of baptisms and burials under the statute 52 Geo. 3, c. 146, in a prescribed form, and copies must annually be sent to the registrar of the diocese, and the correct keeping of them is enforced by heavy punishments. As regards marriages, it is no longer necessary that these should take place

in the parish church ; but where they still do so, the officiating minister is the registrar, for which purpose books of certain forms are provided for him by the registrar, in which books the minister is bound to enter, and duplicate a register of every marriage celebrated in the church. One of these duplicates is sent quarterly to the superintendent registrar, who sends them to the general register office. Where the marriage is not celebrated in a parish church or chapel of the Established Church, then the superintendent registrar must be present, and he is bound to keep the register. The registrar general is to supply the superintendent registrar with register books, the costs whereof shall be borne by the union, parish, or place in or for which he is appointed, and shall be paid by the guardians or by the churchwardens and overseers out of the monies coming to their hands. 6 & 7 Will. 4, c. 86, s. 18. The guardians and overseers of the parish, township, or place, for which the registrar shall act, shall pay him quarterly the following sums :—for the first twenty entries of births and deaths in every year, 2*s.* 6*d.*, and for every subsequent entry in the same year, 1*s.* 6 & 7 Will. 4, c. 86, s. 29. Every rector, vicar, or curate, and every registrar, registering officer, and secretary who shall keep any register book of births, deaths, and marriages, shall at all reasonable times allow searches to be made in his register book, and shall give a certified copy on payment of the following fees :—for every such search extending over a period not more than one year, 1*s.*, and 6*d.* additional for every additional year, and 2*s.* 6*d.* for every single certificate. 6 & 7 Will. 4, c. 86, s. 35. At the superintendent registrar's office a general search may be made for a fee of 5*s.*, for a particular search, 1*s.*, and for every certified copy, 2*s.* 6*d.* 6 & 7 Will. 4, c. 86, s. 36. At the general register office for a general search, a fee of 20*s.* is payable, for a particular search, 1*s.*, and for a certified copy, 2*s.* 6*d.* 6 & 7 Will. 4, c. 86, s. 37.

BATHS AND WASH-HOUSES' COMMISSIONERS.

<i>How established in parish,</i> 31.	<i>Powers and liabilities of commissioners, 35.</i>
<i>Appointment of commis- sioners, 32.</i>	<i>Proportion of baths for labour- ing classes, 36.</i>
<i>Accounts of commissioners, 33.</i>	<i>Charges for baths, &amp;c., what, 36.</i>
<i>Expenses, how defrayed, 34.</i>	<i>Charges, how recovered, 37.</i>
<i>Two parishes may join, 34.</i>	<i>Overcharges, 37.</i>

It is often of importance in a parish, especially of populous towns, to establish public baths and wash-houses. This may be done by the Baths and Wash-houses Act, 9 & 10 Vict. c. 74, being adopted, as it may be for boroughs in England regulated by the Municipal Corporations Act, 5 & 6 Will. 4, c. 76, and also with the approval of one of Her Majesty's secretaries of state for any parish in England not within any such incorporated borough. 9 & 10 Vict. c. 74, s. 1. Where there is a borough, the council may determine to adopt the Act, in which case they may charge the expenses on the borough fund. *Id.* ss. 2, 3.

*How established in parish.]* Upon the requisition in writing of ten or more ratepayers of any parish, not being within any such incorporated borough, *i. e.*, every place which has separate overseers of the poor, and separately maintains its own poor, or maintains its own poor and has a vestry, the churchwardens or other persons to whom it belongs to convene meetings of the vestry in such parish shall convene a meeting of the vestry for the special purpose of determining whether this Act shall be adopted for the parish, after public notice of such vestry, and the place and hour of holding the same, and the special purpose thereof, given in the usual manner in which notice of the meetings of the vestry is given, at least seven days before the day to be appointed for holding such vestry; and if thereupon it shall be resolved by the vestry that this Act ought to be adopted for the parish, a copy of such resolution extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of Her Majesty's principal secretaries of state for his approval, and as soon as such approval shall have been signified in writing under the hand of any such secretary of state, such of the provisions of this Act as are applicable in

that behalf shall thenceforth take effect and come into operation in the parish: Provided always, that no such resolution of the vestry shall be deemed to be carried unless at least two-thirds of the number of votes given on the question according to the usual manner of voting at such vestry shall have been given for such resolution. *Id.* s. 5.

"Vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry elected under an Act passed in the 59 Geo. 3, c. 12, intituled "An Act to amend the Laws for the Relief of the Poor," or elected under an Act, 1 & 2 Will. 4, c. 60, intituled "An Act for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain Parishes of England and Wales," or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry. *Id.* s. 2. Also, any body of persons acting under any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry. 10 & 11 Vict. c. 61, s. 2.

*Appointment of commissioners of baths.*] The vestry shall appoint not less than three nor more than seven persons, being ratepayers of the parish, commissioners for carrying this Act into execution in the parish, of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly, but shall be eligible for immediate re-appointment. 9 & 10 Vict. c. 74, s. 6.

Any commissioner may at any time resign his office as a commissioner on giving seven days' notice in writing of his intention to resign to the clerk, and also to the churchwardens. *Id.* s. 7.

Any vacancies in the commissionership may be filled up by the vestry when and as the vestry shall think it. *Id.* s. 8. The commissioners shall meet at least once in every calendar month at their office, or some other convenient place previously publicly notified. *Id.* s. 9.

The commissioners may meet at such other time as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner, by writing under his hand, to summon, with at least forty-eight hours' notice, the commissioners for any special purpose therein named, and to meet at such times as shall be therein named. *Id.* s. 10.

At all meetings of the commissioners any number not less than one-third of the whole number, when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed then any number

not less than two commissioners, shall be a sufficient number for transacting business, and for exercising all the powers of the commissioners. *Id.* s. 11.

The commissioners shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for effecting the purposes of this Act, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office. *Id.* s. 12.

All orders and proceedings of the commissioners shall be entered in books, to be kept by them for that purpose, and shall be signed by the commissioners, or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings; and such books may be produced and read as evidence of all such orders and proceedings upon any appeal, trial, information, or other proceeding, civil or criminal, and in any court of law or equity whatsoever. *Id.* s. 13.

*Accounts of commissioners.*] The commissioners shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money shall have been paid and such liabilities shall have been incurred; and such books shall at all reasonable times be open to the examination of every commissioner, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the commissioners, or any of them, or any of their officers or servants having the custody of the said books, being thereunto reasonably requested, shall refuse to permit or shall not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copy or extract, every commissioner, officer, or servant so offending shall for every such offence forfeit any sum not exceeding 5*l.* *Id.* s. 14. A ratepayer means any person for the time being assessed to and paying poor rates. 10 & 11 Vict. c. 61, s. 2.

The vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the commissioners, and at such time in the month of March in every year after the adoption of this Act for the parish as the vestry shall appoint, the commissioners shall produce to the auditors their accounts, with sufficient vouchers for all monies received

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and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry. 9 & 10 Vict. c. 74, s. 15.

*Expenses, how defrayed.*] The expenses of carrying this Act into execution in any parish not within any such incorporated borough, to such amount as shall be from time to time sanctioned by the vestry, shall be chargeable upon and paid out of the monies to be raised or applicable for the relief of the poor of the parish. *Id.* s. 16.

For defraying the expenses which shall have been or shall be incurred in carrying this Act into execution in the parish the vestry may and shall from time to time order the overseers to levy with and as part of the rate for the relief of the poor of the parish such sums as the vestry shall deem necessary, and the amount thereof shall accordingly be assessed, levied, paid, and recovered in like manner, and with the like powers and remedies in all respects, as such rate, and shall be paid by the overseers, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same, and his receipt shall be a sufficient discharge to the overseers for the same, and shall be allowed accordingly in passing their accounts. *Id.* s. 17.

The money raised for defraying the expenses of carrying this Act into execution, and the income arising from the baths and wash-houses and open bathing places in the parish, shall be applied by the commissioners in or toward defraying the expenses of carrying this Act into execution in the parish; and whenever, after repayment of all monies borrowed for the purpose of carrying this Act into execution in the parish, and the interest thereof, and after satisfying all the liabilities of the commissioners with reference to the execution of this Act in the parish, and providing such a balance as shall be deemed by the commissioners sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the commissioners, they shall pay the same to the overseers in aid of the rate for the relief of the poor of the parish. *Id.* s. 18.

*Two parishes may join.*] The vestries of any two or more neighbouring parishes which shall have respectively adopted this Act may concur in carrying this Act into execution in such parishes in such manner not inconsistent with the provisions of this Act, and for such time, as they shall mutually agree; and for that purpose it may, with the approval of such secretary of state, be agreed on between such vestries that

any public baths and wash-houses and open bathing places shall be erected and made in any one of such parishes, to be vested in the commissioners thereof, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually agree, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of the same respective parish accordingly; and, according and subject to the terms which shall have been so agreed on, the commissioners appointed for each of such parishes shall, in the management of the said baths and wash-houses and open bathing places, form one body of commissioners, and shall act accordingly in the execution of this Act, and the accounts and vouchers of such commissioners shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses. *Id.* s. 19.

*Powers and liabilities of commissioners.*] The commissioners are a body corporate, and may sue and be sued as such. *Id.* s. 20. They may borrow money for the purposes of the Act, with the approval of the treasury, on the security of a mortgage of the borough fund, or of the poor rates of the parish. *Id.* s. 21. Or the commissioners may borrow from the public works loan commissioners on like security. *Id.* s. 22. The commissioners may also, with the approval of the vestry and of the guardians of the poor, if any, and of the poor law board, from time to time appropriate for the purposes of this Act in the parish any lands vested in such guardians or in the churchwardens and overseers of the parish, or in any *feoffees* or trustees of the parish, or may contract for purchase of the same. *Id.* s. 24. The commissioners may either erect baths and wash-houses, and also open drying grounds and bathing places, or purchase existing baths. *Id.* ss. 25, 27. The commissioners are not personally liable for or in respect of anything done or suffered in due pursuance of the Act. *Id.* s. 29. But they are bound to take reasonable care to fit up safe places for the public use. *Cowley v. Corporation of Sunderland*, 6 H. & N. 565. The general management, regulation, and control of the public baths and wash-houses and bathing places are vested in the commissioners, who may make byelaws for the due management, inflicting fines not exceeding 5*l.* for every breach, such byelaws being first approved of by one of the secretaries of state, and hung up in all the baths, &c. 9 & 10 Vict. c. 74, ss. 33, 34, 35. The commis-



sioners, whenever the baths which have been established seven years and upwards are deemed by the vestry too expensive, may sell the same, with the approval of the treasury, and apply the price to the poor rate. *Id.* s. 32.

*Proportion of baths for labouring classes.*] The number of baths, washing tubs or troughs, for the labouring classes in any building or buildings under the management of the town council or commissioners shall not be less than twice the number of the baths, &c., of any higher class if but one, or of all the baths of any higher classes if more than one, in the same building or buildings. *Id.* s. 36. 10 & 11 Vict. c. 61, s. 5.

*Charges for baths, &c.*] The commissioners may make charges for the baths, &c., not exceeding the following:—

#### 1. *Baths for the Labouring Classes.*

Every bath to be supplied with clean water for every person bathing alone, or for several children bathing together, and in either case with one clean towel for every bather.

For one person above eight years old:—

Cold bath, or cold shower bath, any sum not exceeding 1*d.*

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding 2*d.*

For several children, not above eight years old, nor exceeding four, bathing together:

Cold bath, or cold shower bath, any sum not exceeding 2*d.*

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding 4*d.*

#### 2. *Baths of any higher Class.*

Such charges as the council and the commissioners respectively think fit, not exceeding in any case three times the charges above mentioned for the several kinds of baths for the labouring classes.

#### 3. *Wash-houses for the Labouring Classes.*

Every wash-house to be supplied with conveniences for washing and drying clothes and other articles.

For the use by one person of one washing tub or trough, and of a copper or boiler (if any), or, where one of the washing tubs or troughs shall be used as a copper or boiler, for the use of one pair of washing tubs or troughs, and for the use of the conveniences for drying:

For one hour only in any one day, any sum not exceeding 1d.

For two hours together, in any one day, any sum not exceeding 3d.

Any time over the hour or two hours respectively, if not exceeding five minutes, not to be reckoned.

For two hours not together, or for more than two hours in any one day, such charges as the council and the commissioners respectively think fit.

For the use of the washing conveniences alone, or of the drying conveniences alone, such charges as the council and the commissioners respectively think fit, but not exceeding in either case the charges for the use for the same time of both the washing and the drying conveniences.

*4. Wash-houses of any higher Class.*

Such charges as the council and the commissioners respectively think fit.

*5. Open Bathing Places.*

Where several persons bathe in the same water, for one person,  $\frac{1}{2}$ d. 10 & 11 Vict. c. 61, sched.

*Charges, how recovered.*] For the recovery of the charges at such wash-houses the officers, servants, and others having the management thereof may detain the clothes brought to be washed or other goods and chattels of any person refusing to pay the charge to which such person may be liable, or any part thereof, till full payment thereof be made, and in case such payment be not made within seven days may sell such clothes, goods, and chattels, or any of them, returning the surplus proceeds of such sale, after deducting the unpaid charge and the expenses of such detention and sale, and the unsold articles, if any, on demand, to such person. 9 & 10 Vict. c. 74, s. 38.

*Overcharges, &c.*] If any clerk or other officer, or any servant who shall be in anywise employed by any council or commissioners in pursuance of this Act, shall exact or accept any fee or reward whatsoever for or on account of anything done or forborne or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to putting this Act into execution, other than such salaries, wages, or allowances as shall have been appointed by the council or commissioners, or shall in anywise be concerned or interested in any bargain or contract made by the council or commissioners for or on account of anything done or forborne or to

be done or forborne in pursuance of this Act, or on any account whatsoever relative to the putting of this Act into execution, or if any person during the time he holds the office of member of the council or commissioner shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of this Act, or be concerned directly or indirectly in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under this Act, and shall for every such offence also forfeit the sum of 50*l.* *Id.* s. 39.

Such part of any penalty recovered under this Act as shall not be awarded to the informer shall be paid to the credit, as regards a borough, of the borough fund, and as regards a parish, of the rate for the relief of the poor thereof. *Id.* s. 40.

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#### BEADLE.

The beadle is one of the most ancient officers of a parish, the name itself being of Saxon origin (bydel or beadel from biddan), and descriptive of his duties as a crier or messenger. The beadle is chosen by the parishioners in vestry assembled, and holds office during pleasure, for he can be dismissed at any time by the parishioners for misconduct. The usual practice is to appoint him at Easter, and he continues in office from year to year, unless dismissed. He has generally a salary allowed to him. His duty consists in attending the vestry; distributing notices and summoning vestry meetings; serving notices to attend committee meetings, &c. He is also usually a constable, and as such summons the jury on coroners' inquests and attends the same; and even without such appointment he is recognized at common law as an assistant of the constable, and as such may detain persons suspected of felony. *Lawrence v. Hedger*, 3 Taunt. 14. But his powers are not so extensive as those of a constable. *Cliffe v. Littlemore*, 5 Esp. 39.

## CHURCHWARDENS.

<i>Duties of, generally, 39.</i>	<i>Duty as to parish goods,</i>
<i>Who may be, 40.</i>	<i>monuments in church, &amp;c.,</i>
<i>Appointment and election of,</i>	<i>45.</i>
<i>40.</i>	<i>Duty to provide utensils, 46.</i>
<i>Admission of, 42.</i>	<i>Duty as to church ornaments,</i>
<i>Misbehaviour of, 43.</i>	<i>47.</i>
<i>Duty as to the poor and</i>	<i>Duty to preserve decorum in</i>
<i>secular matters, 43.</i>	<i>divine service, 48.</i>
<i>Duty as to presentments,</i>	<i>Disturbance in churches,</i>
<i>43.</i>	<i>chapels, churchyards, or</i>
<i>Duty as to sequestrations,</i>	<i>burial grounds, 48.</i>
<i>44.</i>	<i>Duty to repair the church</i>
<i>Duty as to seats in church,</i>	<i>and make and enforce</i>
<i>44.</i>	<i>church rates, 50.</i>

*Duties of churchwardens generally.*] Churchwardens are parochial officers appointed to be the proper guardians of the parish church, the maintenance of which is their primary duty, and from their connection with which they derive their consequence in the parish as its foremost officers. They were originally intended to confine their attention to ecclesiastical matters only, or rather to be the temporal guardians of things ecclesiastical; but they have had many miscellaneous secular duties imposed upon them by Acts of Parliament. Formerly certain persons called synodsmen, sidesmen, or questmen were summoned out of each parish by the bishop to give information as to the disorders of the clergy and people, and the duties of those persons, so far as they are not obsolete, devolve on the churchwardens. Churchwardens are not strictly speaking a corporation, though in some respects they resemble a corporation, for the goods of the church are vested in them. They cannot, however, dispose of those goods without the consent of the vestry and the licence of the ordinary. *Prideaux*, 185. The real owners are the parishioners, and the churchwardens are merely used as nominal owners for purposes of convenience as representing the parishioners. Some inconvenient consequences resulted from this situation previous to a recent statute, for a churchwarden could not be found guilty of larceny for stealing the goods of the church, seeing that he was rightfully in possession of them. Churchwardens are essential to the existence of a parish, for no parish can be without them. *R. v. Hinsley*, 12 East, 361.

*Who may be a churchwarden.*] There are certain persons who are absolutely disqualified to serve as churchwardens; as for example, aliens, Papists, Jews, children under ten years of age, and persons who have been convicted of felony. Various persons have also been privileged by statute from serving, that is to say, they are not actually disqualified, but it is optional in them whether they will serve or not: such are peers of the realm, clergymen, members of parliament, barristers, attorneys, physicians, surgeons, officers in customs, those holding public offices, and various others. 1 *Burn. Eccl. L.* 298; *Rogers, Eccl. L.* 219. If a dissenter from the Church of England has been appointed, and shall have any scruple to take the office, he may appoint a deputy, if such deputy is approved. 1 *Wm. & M. c.* 18. And so may Roman Catholics if appointed. 31 *Geo. 3, c.* 32, s. 7. 52 *Geo. 3, c.* 155. Where a Quaker is appointed, he will not be compelled to serve the office owing to his peculiar sentiments. *Adey v. Theobald*, 1 *Curt.* 447. In regard to all other persons, it is a general rule that the office of churchwarden is compulsory, and no one can refuse to serve if legally chosen. All persons who are inhabitants of the parish are so liable, and it is not clear that even women are exempt, though for obvious reasons they are never elected. *Olive v. Ingram*, 2 *Str.* 1114. An inhabitant in this sense need not be a resident in the parish, provided he occupy property or carry on business there. Thus a banker in London who occupied a house in a London parish but lived elsewhere, was held bound to serve. *Brook v. Owen*, 1 *Hagg.* 380. But occupation of a house is necessary; and hence a mere lodger is not liable to serve; *Ford v. Chancery*, 1 *Hagg.* 382; nor is the occupier of land only. *Prideaux*, 60. Bodily infirmity or poverty is not a ground of exemption. In ecclesiastical district parishes formed out of the mother parish, the churchwardens appointed for such district parishes must be fit and proper persons, and must also reside in the district, by analogy to what takes place in the original parish, though the statutes leave the qualification somewhat vague. Yet the parishioners who reside within those districts are still entitled also to vote in the election of churchwardens for the original parish. *R. v. Stevens*, 27 *J. P.* 437.

*Appointment and election of churchwardens.*] The number of churchwardens is generally two, who are chosen with the joint consent of the minister and parishioners. If these cannot agree, then the minister is to choose one and the parishioners the other. *Canons* 89, 90. This order will however be varied by custom, and if it has long been the custom for the inhabitants to choose both, as is the case in some London parishes, then such custom is the law of the parish. If the minister is entitled to

nominate one, the curate may stand in his place for that purpose. *Hubbard v. Penrice*, 2 Str. 1246. Many large parishes are divided into several districts, townships, or tithings, in each of which by ancient custom a churchwarden is appointed who represents the whole parish. *R. v. Marsh*, 5 A. & E. 468. Wherever the custom is obscure or uncertain, then the rule laid down by the canons ought to be observed. The custom may be for the old churchwardens to appoint, or for the lord of the manor, or for a select vestry to do so. In the case of the Church Building Acts the rule of the canon is applied by these statutes. If the persons who are entitled to nominate churchwardens refuse to do so, they can be compelled by a writ of mandamus from the court of Queen's Bench. *R. v. Rector of Birmingham*, 7 D. & E. 254. Sometimes it has been usual in a parish to fine persons who have been chosen and refuse to serve in the office, which fine is applied to the use of the parish, and though such a practice is not strictly legal, yet the courts have never yet held it to be illegal. *Birnie v. Weller*, 3 Hagg. 474; *Adey v. Theobald*, 1 Curt. 447.

The mode of electing a churchwarden is similar to other modes of proceeding in a vestry. The proper place for the vestry to meet is some convenient place in the precincts of the church; and the rector has a common law right to preside at such elections.

The 90th canon enjoins that churchwardens shall be chosen the first week in Easter. The outgoing churchwardens are the returning officers at the election by the vestry, and the mode of procedure on such occasions is more properly stated under the title of "Vestry," *post*. The legality or illegality of an election of churchwardens will be determined by the courts of common law upon an application for a mandamus to elect another for the remainder of the year, and the ordinary has no power to determine such a question. *R. v. Wis*, 2 B. & Ad. 197. *R. v. Rector of Birmingham*, 7 A. & E. 259. If the person elected is not qualified, the proper course is to apply for a mandamus to elect or appoint another fit person; and a *quo warranto* does not lie against a churchwarden. *Re Barlow*, 30 L. J. Q. B. 271. A mandamus, however, will not be granted unless it appear that the votes allowed or rejected improperly turned the scale in favour of the party alleged to be wrongly elected. *Ex p. Joyce*, 23 L. J. M. C. 28. In newly-built churches the mode of electing churchwardens is not uniform. By the 59 Geo. 3, c. 184, the incumbent is to appoint one, and if there is no distinct vestry belonging to the district, a select vestry consisting of persons nominated by the commissioners out of the substantial inhabitants shall elect the other. Under the 1 & 2 Will. 4, c. 38, s. 16, one shall be appointed by the incumbent, and the

other shall be elected by pew renters. In chapels of ease and under the Church Endowment Act one shall be chosen by the minister, and one by the persons being members of the Established Church exercising the powers of vestry in such new pariah. 6 & 7 Vict. c. 37, s. 17. By the stat. 8 & 9 Vict. c. 70, ss. 6, 7, one is to be appointed by the incumbent and the other elected by the resident householders, or if there is no district, by the pew renters.

*Admission of churchwardens.*] Churchwardens when elected must be sworn into office at the next visitation after their election, which shall be held either by the bishop, archdeacon, or other ordinary, and which is usually in the first week after Easter. Formerly an oath was required to be taken of a particular form; but now "every person entering upon the office of churchwarden or sidesman, before beginning to discharge the duties thereof, shall, in lieu of such oath of office, make and subscribe in the presence of the ordinary, or other person before whom he would, but for the passing of this Act, be required to take such oath and declaration, that he will faithfully and diligently perform the duties of his office; and such ordinary and other person is hereby required to administer the same accordingly." 5 & 6 Will. 4, c. 62, s. 9. The regular practice is for the outgoing churchwardens to present their successors to the ordinary for admission. But a formal presentation is not necessary. No fee is demandable on such occasions. *Goslin v. Ellison*, 1 Salk. 330. Except by ancient custom. *Shepherd v. Payne*, 12 C. B. N. S. 414. Until this admission the old churchwardens still continue in the office, and are bound to discharge all the duties. *Bray v. Somers*, 2 B. & S. 374. The churchwarden ought not to discharge the duties of the office until he has taken the declaration, though it appears his acts will not be void. *Id.*

If the person elected refuse to take the declaration, he was formerly liable to be excommunicated by the ecclesiastical court, which is now an obsolete remedy; but he may be taken into custody under the writ *de contumace capiendo*, which issues out of chancery. 53 Geo. 3, c. 127. In case of re-election, re-admission is proper; *Stoughton v. Reynolds*, 2 Str. 1045; but it seems not necessary; *Bray v. Somers*, 2 B. & S. 374; and a person will not be compelled, unless there is a contrary custom, to serve twice. 1 *Burns*, *Ecc.* 40, a. The office of the ordinary in admitting a churchwarden is ministerial only; and he cannot decide on the validity of the election. *R. v. Rice*, *Ld. Raym.* 138. *R. v. Harris*, 3 Burr. 1420. A mandamus is the proper remedy to compel the archdeacon or ordinary to admit the churchwarden; nevertheless it will be a good return to such writ that the person was not duly elected, (*R. v. Williams*, 8 B. & C. 681,) or was a Jew or Papist or disqualified person. It is, however, no

answer for the ordinary to return that there were two claimants for the office, and he did not know which was rightly entitled, for in such a case he ought to admit both. *R. v. Archdeacon of Middlesex*, 5 N. & M. 494; 3 A. & E. 615. So he cannot object on the ground of the claimant being a poor man. *R. v. Eice*, Ld. Raym. 138. The validity of the election may be afterwards tried by an action for a false return. *R. v. White*, Ld. Raym. 1379. *R. v. Twitty*, 2 Salk. 433.

If a churchwarden quits the parish where he is serving, this does not *ipso facto* avoid his election, though it is a good ground for the appointment of another in his place. *Stephenson v. Langston*, 1 Hagg. 379.

*Misbehaviour.*] If a churchwarden misbehave in his office, he may be removed on a complaint to the bishop or ordinary. *Com. Dig. Eglise*, F. 2; *Lamb. Off. Ch.* s. 3. He may also be sued for neglect of duty in the Ecclesiastical Court. *Welcome v. Lake*, 1 Sid. 281. If he take money corruptly under colour of his office he is indictable. *R. v. Eyres*, 1 Sid. 307. If on going out of office he refuse to account, any inhabitant may call him to account before the ordinary, or their successors may have an action against him for the church goods or for damage done to the parish. *Astle v. Thomas*, 2 B. & C. 271. And the ecclesiastical court will compel them to exhibit their accounts, though it cannot decide whether the accounts are correct. *Adams v. Bush*, Str. 113, 974. *Loman v. Guitoy*, 3 T. R. 3.

*Duty as to the poor, and other secular matters.*] Churchwardens of a common law, but not of an ecclesiastical parish, are *ex officio* overseers of the poor of the parish where the poor are maintained by the parish and not by townships or hamlets within it. They along with the overseers form one body of overseers of the poor, and exercise all the powers and authorities, and perform all the duties assigned to them by statutes and by the rules and orders of the poor law commissioners. They along with the overseers are a body corporate for the purpose of taking and holding workhouses and lands purchased in trust for the parish. Churchwardens and overseers of the poor are also *ex officio* members of the select vestry, when such vestry is established in a parish. 59 Geo. 3, c. 12, s. 1. It is the duty of the churchwardens and overseers every year to make out the jury lists, and to affix a copy on the church door on the first three Sundays in September, (6 Geo. 4, c. 50, ss. 8, 9,) and they must continue to do so each year until the successors are admitted. *Bray v. Somers*, 2 B. & S. 374.

*Duty as to presentments.*] The duty of churchwardens is to present at visitations all offences which tend to impair the



good order and public decency of the parish, and this duty devolves on them as the successors of the ancient sidesmen. For this purpose they are bound to attend twice every year at the visitations of the bishop, archdeacon, or other ordinary, though strictly speaking they are not compellable to attend except when the bishop visits. Can. 116, 117; *Prideaux*, 2. In such presentments they need not proceed on their own knowledge, but may act on common fame; and if they neglect, they may be proceeded against in the ecclesiastical courts for breach of their oaths or declaration. *Prideaux*, 3. Many of these duties however are now obsolete, such as presenting persons for not attending church, for incontinency, common swearing, travelling on the Lord's-day, &c. Their duty is to present all breaches and neglect of duty or misconduct in their minister, and the want of regular services and sacraments in the church, or irregularities in the order of divine service, or unsound doctrine. *Prideaux*, 20; Canon 45. *Newberry v. Goodwin*, 1 Phill. 282. *R. v. Todd*, 3 Notes, Cas. 52. So any refusal of the minister to bury the dead or read the burial service is a presentable offence.

*Duty as to sequestrations.*] Another duty of the churchwardens is to have the sequestration and care of the benefice during a vacancy caused by death or otherwise. For this purpose they procure from the chancellor of the diocese the sequestration, having taken out an instrument for it under the seal of the office. Under this authority they manage the profits and expenses, gather in tithes, repair houses, appoint a curate, &c. A churchwarden without such authority has no right to provide for divine service or to perform it himself. *Attorney General v. St. Cross*, 25 L. J. 202, Ch. The churchwardens may even be compelled by the ecclesiastical courts to perform these duties by taking out sequestrations. *Prideaux*, 160. The churchwardens are also compelled to be sequestrators when a sequestration is ordered under a Queen's writ for debt, unless the creditor act as such, as he usually does. See *post*, "Clergy, Sequestration."

*Duty as to seats in church.*] It is the duty of the churchwardens to take care of the seats in the church, and that every man regularly takes his seat therein. In some cases, the aisle belongs to the lord of the manor, or other owner of an estate in the parish, by immemorial custom. *Prideaux*, 104. *Cowen v. Pym*, 12 Coke, 195; 3 Ins. 202. An inhabitant of a parish may also, in respect of an ancient messuage, prescribe to a seat in the body of the church as appurtenant to such messuage; in which case the churchwardens cannot deprive him of it. *Bull v. Jones*, 2 Hagg. 417. *Fuller v. Lane*, 2

Add. 472. But as to all other seats, which are repaired at the charges of the parish, the churchwardens, with the advice of the minister, and in subordination to the bishop, have full discretion to order the disposal of them. Hence, in assigning a seat, if a party is aggrieved, he may appeal to the bishop, who, subject to an appeal to the archbishop, can finally decide. Hence, if the bishop grant a faculty to the owners or occupiers of a particular house to occupy a particular pew, the churchwardens cannot interfere, for this is a paramount title. *Harris v. Drew*, 2 B. & Ad. 164. *Burton v. Henson*, 10 M. & W. 105. *Presgrave v. Churchwardens of Shrewsbury*, 1 Salk. 167. The churchwardens, however, have a controlling power to order a pew to be altered, if it interferes with the comfort of others, or obstruct the view. *Gibson v. Wright*, Noy. 108. When seats in the body of the church are pulled down for alterations, the materials belong to the churchwardens for the use of the parishioners. *Prideaux*, 116. But, if a person erect a pew wrongfully, which is ordered to be pulled down, the materials belong to the minister, for they were part of the freehold, which was his.

With regard to the chancel, the parson, whether appropriator, impropriator, or rector, is entitled to the chief seat there. *Clifford v. Wicks*, 1 B. & Ad. 498. *Spry v. Flood*, 2 Curt. 353. But the churchwardens, under the incumbent, have full control over the seats there as well as the seats in the body of the church for purposes of order, though the chancel belong to a lay rector. *Griffin v. Deighton*, 27 J. P. 359.

The sale of pews is illegal at common law, and, in the event of the occupier selling one, or leaving the parish, it reverts to the churchwardens. *Wyllie v. Mott*, 1 Hagg. 19. *Rawlinson v. Medwin*, 19 L. T. 371.

But, under the Church Building Acts, the letting of seats is expressly authorized, payment being half-yearly, and in advance. 5 Geo. 3, c. 45. 59 Geo. 3, c. 134, s. 32.

If a person who sits in a pew, under the direction of the churchwardens is disturbed, he is entitled to a suit against the intruder in the ecclesiastical court, called a suit of perturbation of seat, and also an action at common law on the same ground.

*Duty of churchwardens as to parish goods, monuments in church, ringing bells, &c.*] As the churchwardens are bound to provide certain goods and utensils for the use of the church, those goods are vested in them. But, merely placing goods, such as gas-fittings, in the church, does not make them parish property, unless they were dedicated, which is a question of intention on the part of the owner. In order to dispose of parish goods, such as an old church bell, old communion

plate, &c., the churchwardens must have the consent of the parish and licence of the ordinary, unless, perhaps, the act or contract is beneficial and reasonable. *Methold v. Winn*, 1 Roll. Abr. 393. *Martin v. Watkin*, 2 P. Wms. 268. Both churchwardens, however, must join in the transaction. *Northwaite v. Bennett*, 2 Cr. & M. 316.

The churchwardens have no power to remove any fixtures, monuments, or pictures in the church, if regularly put up with consent of the minister who has the freehold. *Spooner v. Brewster*, 3 Bing. 136. If they are offensive, or incommode the parishioners, the proper course is to apply to the ordinary for a faculty to remove them; and, in general, no alteration ought to be attempted without a faculty. Therefore, the churchwardens have no right to set up monuments without the consent of the minister or of the ordinary. *Beckwith v. Harding*, 1 B. & Ald. 508. If any inscription is put on a monument contrary to the articles or doctrines of the Church of England, as an invitation to pray for the soul of the dead, it is an offence punishable in the ecclesiastical court. *Brecks v. Woolfroy*, 1 Curt. 880.

The churchwardens have no right of access to the church, except under the minister in whom the freehold is vested, and they manage the possession in subordination to him; and hence, they cannot insist on entering to ring the church bell without his permission. *Dewdney v. Ford*, 7 Jur. N. S. 637. *Harrison v. Forbes*, 6 Jur. N. S. 1353. *Redhead v. Wait*, 6 L. T. N. S. 580. Unless, perhaps, on certain occasions, where the minister unreasonably and capriciously withholds his consent.

*Duty to provide utensils of church.*] It is the duty of the churchwardens to provide and from time to time to keep in good and sufficient order and repair, at the expense of the parish, all such things as may be necessary for the decent and orderly celebration of the various services of the church and for the due administration of the holy sacraments. Canon 85.

They are accordingly bound against the time of every communion, at the charge of the parish, and with the advice and direction of the minister, to provide a sufficient quantity of fine white bread and of good and wholesome wine for the number of communicants, who from time to time receive them, which wine is to be brought to the communion table in a sweet and clean standing pot, or stoop of pewter, if not of purer metal; Canon 20; also to provide a chalice or communion cup with a cover, and one or more wine flagons; also one decent basin at least to receive the alms for the poor, and other devotions of the people at the offertory; also

a decent font, of stone, with a cover, where baptism is to be administered, at or near the west end of the church; Canon 81; also a decent seat for the minister to read the service in; Canon 82; also a comely and decent pulpit; Canon 83; also a decent and comely surplice, with sleeves, for the minister while saying the public prayers or ministering the sacraments or other rites of the church; Canon 58; also a large bible of the last translation, a book of common prayer, and the books of homilies allowed by authority; Canon 80; also a strong chest with a hole in the upper part thereof, having three keys, of which one shall remain in the custody of the parson, vicar, or curate, and the other two in the custody of the churchwardens for the time being, which chest the churchwardens are to set or fasten in the most convenient place, to the intent the parishioners may put into it their alms for their poor neighbours; Canon 84; also a decent bier for the burial of the dead; *Lind.* 252; also a bell and rope to ring to church and toll at funerals; *Pearce v. Rector of Clapham*, 3 Hagg. 10; also a register book of christenings and burials, and a register book for marriages; Canon 70; also a book wherein to record the names and licences of the strangers who are admitted to preach in the church; Canon 52; also a book for the churchwardens' accounts, and a terrier of the glebe lands of the parish; Canon 87; also a chest with lock and keys wherein to keep those books; Canon 70; also a vestry book, which, however, is to be provided by the churchwardens and overseers out of the poor rate. 58 Geo. 3, c. 69.

*Church ornaments.]* The subject of ornaments in churches was fully considered by the privy council in the recent case of *Liddell v. Westerton*, Moore, P. C. Cas.; 21 J. P. 499; and the following conclusions were arrived at:—Crosses, as distinguished from crucifixes, have been in use as ornaments of churches from the earliest periods of christianity, and when used as mere emblems of the christian faith, and not as objects of superstitious reverence, they may still lawfully be erected as architectural decorations of churches; and hence, a wooden cross on the chancel screen is lawful as a mere architectural decoration, though it would be otherwise if fixed on the altar. The communion table ought to be movable and of wood, and not a marble or stone structure sunk in the pavement; but the wood may be carved. A credence table, *i. e.*, a small table, on which the bread and wine are placed before the consecration, is unobjectionable. Though the communion table is to be covered during divine service with a carpet of silk, or other decent stuff, it need not always be covered with the same cloth, or with cloth of the same colour or texture. Embroidery and lace in or about the fine white linen cloth used

on the table at the ministration of the communion are not allowed. Large massive candlesticks and candles placed on the communion table are contrary to law, except where they are lighted to give necessary light; accordingly, they should not be of a form and size merely ornamental. Brazen gates and a rood screen, separating the nave from the church, are perhaps not strictly illegal, and the ecclesiastical court will not order their removal, but no bishop should consecrate a church so fitted up. The ten commandments must be set up at the east end not merely of the chancel but of the nave.

*Duty to preserve order during divine service.*] It is one of the leading duties of the churchwardens to preserve order and decorum in the church during divine service. They are to see that reverence and attention are used; that no loiterers are suffered; Canons 18, 19; and that disturbers of the service be presented. Canon 111. They may accordingly, it is said, chastise children who behave rudely; *Prideaux*, 12; at least, they may by force put out all disturbers with as little violence as possible. *Williams v. Glenister*, 3 B. & C. 699. *Burton v. Henson*, 10 M. & W. 105. *Reynolds v. Monkton*, 2 M. & R. 384. Though they have no power at common law to detain disturbers when so put out, still they may do so under a recent statute, 23 & 24 Vict. c. 32. Certain ancient statutes imposed fines on persons for interrupting or disturbing the minister. 5 & 6 Edw. 6, c. 1; 1 Mar. 1, sess. 2, c. 3; 1 Eliz. c. 2; 1 W. & M. sess. 1, c. 18. But the most effectual remedy is now that which is supplied by the recent statute, 23 & 24 Vict. c. 32.

*Disturbance in churches, chapels, churchyards, or burial grounds.*] Any person who shall be guilty of riotous, violent, or indecent behaviour, in England or Ireland, in any cathedral church, parish or district church or chapel of the church of England and Ireland, or in any chapel of any religious denomination, or in England in any place of religious worship duly certified under the provisions of 18 & 19 Vict. c. 81, intituled "An Act to amend the Law concerning the certifying and registering of Places of Religious Worship in England," whether during the celebration of divine service or at any other time, or in any churchyard or burial ground, or who shall molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet or misuse any preacher duly authorized to preach therein, or any clergyman in holy orders ministering or celebrating any sacrament, or any divine service, rite or office, in any cathedral church or chapel, or in any churchyard or burial ground, shall, on conviction thereof before two justices of the peace, be liable to a penalty of not

more than 5*l.* for every such offence, or may, if the justice before whom he shall be convicted think fit, instead of being subjected to any pecuniary penalty, be committed to prison for any time not exceeding two months. 23 & 24 Vict. c. 32, s. 2.

*Offenders apprehended, &c.*] Every such offender in the premises after the said misdemeanor so committed immediately and forthwith may be apprehended and taken by any constable or churchwarden of the parish or place where the said offence shall be committed, and taken before a justice of the peace of the county or place where the said offence shall have been so committed, to be dealt with according to law. *Id.* s. 3.

Any person convicted as aforesaid who shall think himself aggrieved by such conviction may forthwith appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction for the county, riding, division, city, or borough wherein the cause of complaint shall have arisen; provided such person shall enter into a recognizance with two sufficient sureties before the convicting justices, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such recognizance being entered into, the justices shall liberate such person, and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment. *Id.* s. 4.

*Old statutes, &c.*] The Act chapter four of the statute passed in the session of parliament of the fifth and sixth years of the reign of Edward the Sixth is hereby repealed, so far as relates to persons not in holy orders. Nothing hereinbefore contained shall be taken to repeal or alter the statute passed in the second session of the first year of the reign of Queen Mary, chapter three; or the statute passed in the first year of the reign of Queen Elizabeth, chapter two; or the eighteenth section of the statute passed in the first year of the reign of King William and Queen Mary, chapter eighteen. Provided also, that nothing herein contained shall limit, restrain, or abolish the power possessed by the ordinary over the fabric of any church, or over the churchyard or burial ground connected therewith. *Id.* ss. 5, 6, 7.

## CHURCH RATE, HOW MADE.

<i>What, and in what cases,</i> 50.	<i>Chapel rate,</i> 55.
<i>The vestry meeting,</i> 51.	<i>Alterations and rebuildings,</i>
<i>The assessment,</i> 53.	55.

*What, and in what cases.*] Before stating the mode of carrying out and enforcing the repairs of the parish church, it may be well to state shortly what repairs are to be made by the parish. The churchwardens are not bound to repair the chancel, for this is done by the parson, whether appropriator, impropiator, or instituted rector, except where the vicar is bound by special composition, in which case the freehold of the chancel as well as of the body of the church and churchyard is in the vicar. The parishioners may, however, by custom, be bound to repair the chancel. *Steward v. Francis*, 3 Curt. 299. *Bishop of Ely v. Goody*, 4 Hagg. 156. The soil and feed of the churchyard are also in the minister, and the trees growing therein; but he cannot cut down the trees except for the repair of the chancel, or, at the parishioners' request, to repair the body of the church; they must be specifically applied to such purpose and no other. *Duke of Marlborough v. St. John*, 5 De G. & S. 174. *Strachy v. Francois*, 2 Atk. 216. As to the fabric of the church and the churchyard these are the freehold of the parson and not of the parishioners, and the parishioners merely have the use of these, in consideration of which use the common law imposes on them, as represented by the churchwardens, the duty of keeping them in repair. They must see that the churchyard is in decent and fit order, and the gates and fences sufficient and the churchways leading through the same. The repairs of chapels of ease, parochial chapels, and district churches also fall upon the parishioners, and not only may the churchwardens of a district church make a rate to defray the necessary repairs of the fabric of the district church, but may also include in the rate the expenses necessary for the decent celebration of the service, in the same way as if it were an ancient pariah church. *R. v. Judge of Consistory Court*, 31 Law J. 237, Q. B. When churchwardens order repairs to be done to the church they render themselves personally liable to the parties with whom they contract, or if one churchwarden alone order the repairs, he will be alone liable. *Chambers v. Jones*, 5 Exch. 229.

*Northwaite v. Bennett*, 2 C. & M. 816. And as a general rule, if the churchwardens accept a bill of exchange, or grant a bond, they are personally liable though described as churchwardens. And the churchwarden has no lien on the parish books for the monies expended for the use of the parish. A church rate is a mode of raising the sums required for the necessary repairs of a parish church, for the ornament of it, and for the decent and orderly celebration of divine service and the administration of the sacraments therein. The rate or assessment itself is made by the churchwardens of the parish; but they must previously have the authority of the parish vestry to do so. The churchwardens of themselves cannot make a rate: the parishioners in vestry alone can decide that a rate shall be made, and the amount of it. But if the churchwardens neglect to call a meeting of the vestry for the purpose, the court of Queen's Bench may compel them to do so by mandamus; or if they contumaciously refuse to do it, they may be punished by the ecclesiastical court.

*The vestry meeting.*] When a church rate becomes necessary, the first proceeding of the churchwardens is to call a meeting of the parish vestry. They must then prepare estimates of the sums which will be required for necessary repairs, for the celebration of divine service, and the administration of the sacraments; and at the vestry meeting they submit these estimates to the parishioners present, and move that a rate of so much in the pound (sufficient to raise the sums required) be made. A vestry is the assembling of the whole parish, though in practice parishioners represent the parish, and it is not necessary that the meeting should be held in the vestry or the church, provided the place is convenient and accessible to all. *E. v. Rector of Birmingham*, 7 A. & E. 254. Where the population exceeds 2,000 persons, and the poor law commissioners have so ordered, it is no longer competent to hold a vestry in the church. 13 & 14 Vict. c. 57. The notice of a vestry meeting must have been publicly given, stating the special purpose of the meeting and the hour and place of meeting, and this publication is to be on the principal door of the parish church, and all churches in the parish belonging to the establishment, before divine service, and at least three clear days before the day of meeting,—i. e. the meeting cannot be before the Thursday following. 58 Geo. 3, c. 69, s. 1. 1 Vict. c. 54, s. 2. *E. v. Justices of Salop*, 6 Dowl. 28. And such notice must have been previously signed by a churchwarden of the church, or by the rector, vicar, or perpetual curate of such parish. 1 Vict. c. 54, s. 3. In stating the special purpose of the vestry meeting, the substantial purpose



will be looked to, and mere verbal defects in its technical form will not be allowed to annul it. *Blunt v. Harwood*, 8 A. & E. 610. *Rand v. Green*, 7 Jur. N. S. 126. *Warner v. Gater*, 2 Curt. 315. *Smith v. Deighton*, 8 Moore, P. C. 180. If the meeting is adjourned no further notice is necessary. *Lorant v. Scadding*, 13 Q. B. 706; 3 H. L. Cas. 418. As to the business done at vestries, see *post*, "Vestry." The parishioners, as already stated, are bound by law to keep the body of the church in repair; but the parson is bound to repair the chancel unless there be a custom to the contrary. The parishioners are also bound by law to provide everything necessary for the due and orderly celebration of divine service, and the administration of the sacraments. But as to all expenses not necessary to be incurred for these purposes,—for matters of mere ornament, the salary of an organist, or the like,—it seems to be optional with the vestry whether they will sanction them with their vote or not. The sum to be raised by the rate, also, is very much in the discretion of the vestry; but there is in general little use in voting a sum which is inadequate for the purposes for which it is intended, as the churchwardens, after collecting and expending that, may call another vestry meeting for the making of a further rate to complete the necessary repairs, &c. If, on the other hand, a majority of the vestry refuse to make any rate, no rate of course can be made. This point had long been in litigation, in the case of *Gosling v. Veley and Joslin*, usually called the "Braintree case," which finally settled the law on the subject. In 1837, the parish church of Braintree was in a dilapidated state, for want of necessary repair, no rate having been made for the purpose since 1834, a majority of the vestry having from time to time refused to sanction it: at a vestry meeting in 1837, the majority again refused a rate, and the churchwardens then, out of vestry, made a rate for the purpose, which was holden to be bad, as they of themselves had no authority to make it: in 1841, proceedings were had in the consistorial court, at the instance of the vicar, to compel the repairs, and the churchwardens and the parishioners were cited to appear before the vicar-general, to show cause why a monition should not issue—against the churchwardens, to take the necessary steps for putting the church in repair, and providing necessaries for the decent celebration of divine service, and to call a vestry meeting for the purpose,—and against the parishioners to meet in vestry, and make a rate for those purposes: the churchwardens appeared, the parishioners did not, and accordingly a monition was decreed; the churchwardens, having no funds for these purposes, called a vestry meeting, which was numerously attended, and the churchwardens hav-

ing laid before the meeting the proper estimates, moved that a rate of 2s. in the pound should be made; the quantum of the rate was not objected to, nor the dilapidated state of the church denied, but an amendment was moved, stating the injustice of requiring dissenters to contribute to the maintenance of the established church, and that they felt bound by religious principle not to make a rate, and did refuse accordingly,—which amendment was carried by a large majority; the minority then, with the churchwardens, in obedience to the monition, made a rate of 2s. in the pound, which was protested against by the majority; this rate being duly allowed, the churchwardens proceeded to enforce it, by suing Gosling, one of the parishioners rated, in the ecclesiastical court, who, upon the sum at which he had been rated being demanded of him, had refused to pay it; the judge of the consistorial court rejected the libel, thereby deciding against the churchwardens, but upon appeal to the court of arches, that decision was reversed: upon this Gosling applied to the court of Queen's Bench for a prohibition, and upon his declaring in prohibition, the churchwardens demurred to the declaration; the court of Queen's Bench decided in favour of the demurrer, thereby holding that the minority had a right to make the rate, where the majority had refused to make it, saying that it had a strong analogy to an election of a corporation officer, where an elector who votes for a person known to be ineligible, or refuses to vote at all, is holden to concur in the acts of those who vote for the eligible candidate; 16 *Law J.* 201, *qb.*; this judgment of the court of Queen's Bench was affirmed in error by the court of Exchequer Chamber; 19 *Law J.* 111, *qb.*; but upon a further writ of error by Gosling, the person rated, to the House of Lords, (4 H. L. Cas. 679,) their lordships delivered judgment, reversing the judgments of the Exchequer Chamber and the Queen's Bench; and now it is held, that though the majority of a vestry refuse to make a church rate where it is their duty to make it, and they are lawfully required to do so, nevertheless the power of making the rate does not devolve upon the minority.

*The assessment.*] The rate being granted by the vestry, it is the duty of the churchwardens to make the assessment. The form of it, as given in 1 *Burn, Ecc. Law*, 385, is thus:—

*We, the churchwardens and other parishioners of the parish of —, in the county of —, and diocese of —, whose names are hereunto subscribed, do hereby this — day of —, in the year —, at our vestry meeting for that purpose assembled, rate and tax all and every the inhabitants*

and parishioners of the parish aforesaid, herownder mentioned, for and towards the repairs of the church of the said parish, for the present year, the several sums following, viz. :—

A.B.	-	-	-	-	£1	2	0
C.D.	-	-	-	-	0	3	0
E.F.	-	-	-	-	0	2	6

And so on.

G.H.	}	Churchwardens.
I.K.		
L.M.	}	Parishioners.
N.O.		
P.Q.		
R.S.		
£c.		

The rate must show on its face for what purpose and by what authority it was made; *Re Overseers of Moulton*, 25 L. J. 49, M. C.; and care must be taken that an illegal purpose is not stated. *R. v. Byrom*, 12 Q. B. 321.

The rate is usually made out before, and produced at the meeting, as soon as the vestry have decided on granting the rate, and is then signed by the churchwardens and some of the parishioners. The form above given is a somewhat imperfect one; and in cases where it is likely to be disputed, it may be advisable to state it with somewhat more of certainty; and it is suggested that, in analogy to the form of a poor rate, it may be desirable in such a case to state, in one column, the name of the occupier or rate-payer, in another the description of the property in respect of which he is rated, in a third the estimated extent, in a fourth the rateable value, and in a fifth the amount of the rate at so much in the pound. All this may fairly be borrowed from the poor rate of the parish; for the church rate is to be assessed upon all occupiers of land or houses in the parish, whether they reside there or not, (*Burn, Ecc. Law*, 379, 380,) in like manner as the poor rate; and persons not having land or house may in strictness be rated in respect of their personal property, (*Id.* 384,) which however in practice is not done, unless warranted by custom. But though it is always prudent to follow the poor rate, it is not absolutely necessary that this should be done literally, for all that is required in a church rate is that it be just and equal. *Attenborough v. Kemp*, 7 Jur. N. S. 665; 25 J. P. 627. The general rule is that the owners of lands are liable in respect of their own occupation of the lands; and occupiers, whether resident or not, are liable. The rector or vicar however is not chargeable to the church rate, in respect of the rectory or vicarage,

as he is bound to repair the chancel; but an impropiator of a rectory, although bound to repair the chancel, is also bound to contribute to the repairs of the body of the church. *Id.* 383. But it is no excuse that a party rated is an inhabitant of a chapelry, and is rated and contributes to the repairs, &c. of the chapel; *Id.* 304, 383; or that he is an inhabitant of a district in which there is a district church, and that he contributes to the repairs, &c. of that church, unless he be specially exempted by the Church Building Acts. The occupation must, as in the case of the poor rate, be beneficial, and hence public institutions are generally exempt. *Smith v. Keats*, 4 Hagg. 275. Churches, chapels, and meeting-houses are also not liable. 3 & 4 Will. 4, c. 30. Nor scientific and literary institutions supported by voluntary contributions. 6 & 7 Vict. c. 36. The rate being made is then confirmed by the ordinary, as of course, unless a caveat be lodged against it. If the small tenements' rating Act, (13 & 14 Vict. c. 99,) be adopted in the parish, and the owners of tenements the yearly rateable value whereof does not exceed 6*l.*, be rated instead of the occupiers, care must be taken not to rate them to the church rate, for that Act only applies to the poor rate and highway rate.

*Chapel rate.*] The repairs of a chapel [either a chapel of ease or a parochial chapel] are to be made by rates on the landholders within the chapelry, in the same manner as the repairs of a church; and such rates are enforced in the same manner as church rates; and there shall be the like appeals to the ordinary, for unequal assessments. 1 *Burn. Ecc. Law*, 305. But this must be understood of ancient chapels, and where this course has been used; for if there be land given for the repair of such chapels, or any land or estate charged by prescription to the repairs of them, then the custom must be observed. *Id.* We have already seen (*supra*), that paying these chapel rates does not exempt the party from being rated to and paying church rates.

*Alterations and rebuildings.*] Where the rate is to be made not for repairs properly so called, but to enable alterations or rebuildings to take place, the licence of the ordinary is a necessary preliminary,—as, for example, to erect a new gallery or organ or pew. *Hopton v. Kemerton*, 6 Notes Cas. 74. But the erection of anything supernumerary, not connected with the fabric, as a clock, bell, chimes, &c., requires no such licence.

## PAYMENT OF CHURCH RATE, HOW ENFORCED.

<i>In the ecclesiastical court,</i> 56.	<i>Order,</i> 60.
<i>Before justices of the peace,</i> 56.	<i>Warrant of distress,</i> 61.
<i>Complaint,</i> 57.	<i>Appeal,</i> 63.
<i>Summons,</i> 58.	

*In the ecclesiastical court.*] If the validity of the rate be contested, (*Boddenham v. Ricketts*, 4 Ad. & El. 433,) or if the sum at which the party is rated exceed 10*l.*, or 50*l.* in the case of a Quaker, the payment can only be enforced by suit in the ecclesiastical court. But if the sum demanded do not exceed the sums here mentioned, and the validity of the rate be not contested, the payment may be enforced by two justices of the peace in a summary way, and the ecclesiastical court in that case has no jurisdiction. *Richards v. Dyke*, 2 Gale & D. 493.

The proceeding in the ecclesiastical court is called a suit for subtraction of church rate, which must be commenced in the consistory court of the diocese, and an appeal lies to the court of appeal of the province, and thence to the judicial committee of the privy council. The churchwardens must prosecute the suit jointly. The recusant party is cited to appear, and if he fail to do so, may be arrested under writ *de contemptum capiendo*, and detained in prison till he has purged his contempt. The usual grounds of defence are that the rate was illegally made, or for an illegal purpose, or unnecessary or unfair, or that the defendant is not liable to be assessed. Thus it would be illegal if the churchwardens made the rate without calling a vestry, or against the voice of the majority, or without the necessary preliminary public notices, or if a poll were refused. The purpose would be illegal if the rate was made for some purpose foreign to the church rate, as to raise the stipend of the minister to repair the chancel, or if the rate is retrospective. A rate is unnecessary and bad if the churchwardens are already in possession of funds, or a previous rate has not been collected, or the rate is for an excessive sum. A rate is unfairly assessed if certain other persons who ought to have been rated, have been omitted or underrated, or if the defendant has been overrated. A rate would not be bad for omitting to rate very poor persons.

*Before justices of the peace.*] By stat. 53 Geo. 3, c. 127, s. 7. if any one, duly rated to a church rate or chapel rate, the validity whereof has not been questioned in any ecclesiastical court, shall refuse or neglect to pay the same sum at which he is so rated, it shall and may be lawful for any one justice

of the peace of the same county, riding, city, liberty, or town corporate, where the church or chapel is situated, in respect whereof such rate shall have been made, upon the complaint of any churchwarden or churchwardens, chapelwarden or chapelwardens, who ought to receive and collect the same, by warrant under the hand and seal of such justice, to convene before any two or more such justices of the peace, any person so refusing or neglecting to pay such rate, and to examine upon oath into the merits of the said complaint, and by order under their hands and seals to direct the payment of what is due and payable in respect to such rate, so as the sum ordered and directed to be paid as aforesaid do not exceed 10*l.*, [or 50*l.* in the case of Quakers, *Id.* s. 5, and 5 & 6 Will. 4, c. 74,] over and above the reasonable costs and charges, to be ascertained by such justices. 53 Geo. 3, c. 127, s. 7.

As the justices in this case are authorized to make an order, on complaint, the proceedings may be according to Jervis's Act, stat. 11 & 12 Vict. c. 43, and therefore the complaint must be made within six months from the demand to pay. *Id.* s. 11.

The following may be the form of the

*Complaint.*

——— } Be it remembered that on the —— day of ——,  
to wit. } in the year of our Lord ——, the churchwardens  
of the parish of ——, in the [county] of ——, by C. D., one  
of the said churchwardens, complain to the undersigned, one  
of Her Majesty's justices of the peace in and for the said  
[county] of ——, in which the church of the said parish is  
situated, that A. B., of the said parish, being a person duly  
rated and taxed for and towards the repairs of the church  
of the said parish in and by a church rate made on the ——  
day of ——, in the year ——, in the sum of —— (and the  
validity of which said rate hath not been questioned in any  
ecclesiastical court), hath refused and neglected, and still  
doth refuse and neglect, to pay the same sum at which he is  
so rated and taxed as aforesaid: Wherefore the said church-  
wardens, who ought to receive and collect the same, by C. D.  
aforesaid, pray that the said A. B. may be convened and  
summoned to appear before two or more justices of the said  
[county], to show cause why he hath not paid and refuses to  
pay the said sum.

C. D.

Exhibited before me, this ——  
day of ——, 18——, at ——, in the  
county of ——.

E. F.

D 3

This complaint may be made by any one of the churchwardens for the time being, although they were not in office at the time the rate was made; because they are the persons "who ought to receive and collect" the rate.—See *R. v. Fenton*, 1 Q. B. 480. *R. v. Bidwell*, 11 Shaw's J. P. 774. *R. v. St. Clement's*, 12 Ad. & El. 177.

The following may be the form of the

#### Summons.

To A. B., of —, [former].

Whereas complaint hath this day been made before the undersigned, one of Her Majesty's justices of the peace in and for the county of —, in which the church of the parish of —, in the said county is situated, by the churchwardens of the said parish, for that you, being a person duly rated and taxed for and towards the repairs of the church of the said parish, in and by a church rate made on the — day of —, in the year —, in the sum of — (and the validity of which said rate hath not been questioned in any ecclesiastical court), have refused and neglected, and still refuse and neglect, to pay the said sum at which you are so rated and taxed as aforesaid: These are therefore to command you, in Her Majesty's name, to be and appear on —, at — o'clock in the forenoon, at —, before such two or more justices of the peace for the said county as may then be there, to answer to the said complaint, and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the county aforesaid.

E. F. (L. S.)

At the time appointed by the summons, the churchwardens or one of them appear before the justices, produce the rate,—prove that the validity of it has not been questioned in any ecclesiastical court,—show that the defendant is rated in it at the sum mentioned,—and prove that such sum has been demanded of him, and that he has refused or neglected to pay it. This proof must be upon oath.

The rate must have been demanded, and to prove such demand, it was held sufficient that the rate collector called on the defendant, who was not at home, but had instructed his son to refuse, which was done accordingly, by telling the churchwardens that he would not pay. *R. v. Mirehouse*, 24 J. P. 39.

The defendant then enters upon his defence, if he have any. It is provided by the statute 53 Geo. 3, c. 127, s. 7, that if the validity of the rate, or the liability of the defendant to pay it,

be disputed, and the defendant give notice thereof to the justices, the justices shall forbear giving judgment thereupon; and the churchwardens may then "proceed to the recovery of their demand, according to the due course of law as heretofore used and accustomed," that is to say, by suit in the ecclesiastical court. It is not necessary, however, in order to bring the case within this proviso, and prevent the justices deciding the matter, that the validity of the rate should at the time be disputed in the ecclesiastical court; it is sufficient that the defendant states to them or gives them notice that he disputes the validity of the rate, (*R. v. Milnrow*, 5 M. & S. 248,) and also states, if required, his reasons for disputing it, in order that the justices may judge whether his objections be *bond fide*. *R. v. Wrotesley*, 1 B. & Ad. 648. In a case where it appeared that the validity of the rate was *bond fide* disputed, the magistrates adjourned the hearing for a month, in order that the defendant might take proceedings in the ecclesiastical court to dispute the validity of the rate; on the adjourned day the defendant attended, but had not taken any steps in the ecclesiastical court; the magistrates then made an order that he should pay the rate, but refused to issue a distress warrant to enforce it: on application to the court of Queen's Bench to compel the magistrates to issue their warrant, under the 11 & 12 Vict. c. 44, s. 5, which exonerates magistrates from personal liability, if they act in obedience to a rule granted by the court, it was held not to be a case in which the court ought to interfere, for the magistrates are deprived of jurisdiction if the objection to the validity of the rate is made *bond fide*. *R. v. Collins and another*, 16 J. P. 230; 21 Law J. 73, m. If the defendant do not object to the rate at the hearing, he will not be allowed to object to its validity at any future stage of the proceedings, as for instance, in an action for replevin for the taking of his goods under a warrant of distress for the rate, (*Ramsbottom v. Duckworth et al.*, 19 Law J. 73, m.; 1 Ex. 506,) or the like. Where it was objected that the churchwardens had sued the defendant for the very same church rate in the consistorial court, but it was shown on the part of the churchwardens that they had abandoned that suit before they made the present complaint, it was holden that the jurisdiction of the justices was not thereby ousted or affected. *R. v. St. Clement's*, 12 Ad. & El. 177.

The general rule in all such cases is, that if the rate is *ex facie* valid, the justices have merely a ministerial duty to perform, and are bound to enforce the rate, leaving the defendant to urge any objections on the merits before the court of appeal. *Ex p. May*, 26 J. P. 340. It is a question for the justices acting on reasonable evidence, whether the dispute of the rate is made *bond fide*; and if the justices *bond fide*,



though wrongly, decide that this rate is not honestly disputed, they are not liable to an action if there is no malice. *Pease v. Chaytor*, 26 J. P. 36; 27 J. P. 309. Quakers are subject to the same rules as other persons. *Backhouse v. Churchwardens of Bishopwearmouth*, 9 C. B. N. S. 315. If the defendant substantially, though not in express terms, dispute the rate, the justices ought to forbear giving judgment. *R. v. Justices of Leicester*, 24 J. P. 391. Where the objection to the validity of the rate is not made till after other objections, it will still be in time, provided the justices have not then given judgment on any of the objections. *R. v. Justices of Salop*, 24 J. P. 229. *Ex p. Mannering*, 26 J. P. 275.

The following may be the form of the

#### Order.

—— } Be it remembered that on ——, complaint was  
to wit. } made before E. F., esquire, one of Her Majesty's  
justices of the peace in and for the county of ——, in which  
the church of the parish of ——, in the said county, is  
situated, by the churchwardens of the said parish, that  
A. B., of the said parish, being a person duly rated and  
taxed for and towards the repairs of the church of the said  
parish, in and by a church rate made on the —— day of  
——, in the year ——, in the sum of ——, (and the validity  
of which said rate had not been questioned in any ecclesiastical court), had refused and neglected, and did then still  
refuse and neglect, to pay the said sum at which he was so  
rated and taxed as aforesaid: And now at this day, to wit,  
on ——, at ——, the said churchwardens and the said A. B.  
appear before us, the undersigned, two of Her Majesty's  
justices of the peace in and for the said county of ——; and  
now having heard the matter of the said complaint, we do  
adjudge the said A. B. to pay to the said churchwardens the  
sum of —— within seven days after the same shall be legally  
demanded of him, and also to pay to the said churchwardens  
the sum of —— for their costs in this behalf; and if the said  
several sums be not paid within seven days after the same  
shall be legally demanded of the said A. B., we hereby order  
that the same be levied by distress and sale of the goods and  
chattels of the said A. B.; and in default of sufficient distress  
in that behalf, we adjudge the said A. B. to be imprisoned in  
the [house of correction] at ——, in the said county, for the  
space of [three calendar months], unless the said several  
sums, and all costs and charges of the said distress [and of  
the commitment and conveying of the said A. B. to the said  
house of correction] shall be sooner paid.

### *Distress for Church Rate.*

61

*Given under our hands and seals, this — day of —, in the year of our Lord —, at —, in the county aforesaid.*

*G. H. (L. S.)*

*I. K. (L. S.)*

Upon refusal or neglect of such party to pay, according to such order, within seven days after the amount shall have been legally demanded of him, his goods and chattels may, by warrant under the hand and seal of any one of such justices, be distrained for it, not only in the district, parish, &c., for which the rate was made, but within any other district, parish, &c., within the same county or jurisdiction; and if sufficient distress be not found within the same county, &c., then upon oath made thereof before a justice of any other county, &c., in which goods of the party shall be found, and his indorsing his name upon the warrant, the goods of the party may be distrained in such other county, &c., and sold, and the surplus rendered to the party, first deducting therefrom the necessary charges of distraining, to be allowed by the justices. 53 Geo. 3, c. 127, s. 7; 54 Geo. 3, c. 170, s. 12. As to the award of imprisonment, in default of distress, it is in pursuance of the general provision to that effect, in stat. 11 & 12 Vict. c. 43, s. 22 (Jervis's Act). As to the term of imprisonment, the 12 & 13 Vict. c. 14, s. 9, after reciting that "whereas it is desirable to limit the time within which a person assessed to a church rate may be imprisoned for non-payment of the same," enacts that every person now undergoing any such imprisonment, shall be discharged from such imprisonment so soon as he or she shall have been imprisoned three calendar months, or shall sooner pay the sum or sums with which he or she is charged, and that hereafter (from the 11th of May, 1849), no person shall be imprisoned for the non-payment of any church rate for any time exceeding three calendar months.

The following is the form of the

### *Warrant of Distress.*

*To the constable of —, and to all other peace officers in the said county of —.*

*Whereas on — last past, a complaint was made before E. F., esquire, one of Her Majesty's justices of the peace in and for the said county of —, in which the church of the parish of —, in the said county, was situated, by the churchwardens of the said parish, that A. B., of the said parish, being a person duly rated and taxed for and towards the repairs of the church of the said parish, in and by a*

church rate made on the — day of —, in the year —, in the sum of — (and the validity of which said rate had not been questioned in any ecclesiastical court), had refused and neglected, and did then still refuse and neglect, to pay the said sum at which he was so rated and taxed as aforesaid: And afterwards, to wit, on —, at —, the said churchwardens and the said A. B. appeared before G. H. and I. K., esquires, two of Her Majesty's justices of the peace in and for the said county, and the said last-mentioned justices having considered the matter of the said complaint, adjudged that the said A. B. should pay to the said churchwardens the sum of — within seven days after the same should be legally demanded of him, and should also pay to the said churchwardens the sum of —, for their costs in that behalf; and that if the said several sums should not be paid within seven days after the same should be legally demanded of the said A. B., the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the [house of correction] at —, in the said county for the space of [three calendar months], unless the said several sums, and all costs and charges of the said distress [and of the commitment and conveying of the said A. B. to the said house of correction] should sooner be paid: And whereas it is now proved on oath to me the undersigned, one of Her Majesty's justices of the peace in and for the said county, that the said several sums of — and — were on — legally demanded of the said A. B. by the said churchwardens, and whereas the time in and by the said order appointed for the payment of the same hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of four days after the making of such distress the said last-mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto —, the clerk of the justices of the peace for the division of — in the said county, that he may pay and apply the same as by law directed, and may render the overplus, if any, to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

*Given under my hand and seal this — day of —, in  
the year of our Lord —, at —, in the county aforesaid.*  
J. S. (L. S.)

*Appeal.*] Any person finding himself aggrieved by the judgment given by two or more such justices, as above mentioned, may appeal to the next general quarter sessions for the county, &c., wherein the church or chapel shall be situate, with respect to which the rate shall have been made; and if such judgment be affirmed, it shall be with costs against the appellant, to be recovered by distress and sale: provided that in case of appeal, no warrant of distress shall be issued until after the appeal be determined. 53 Geo. 3, c. 127, s. 7. It is not necessary in this case to give notice of appeal to the justices making the order; it is sufficient to give it to the churchwardens. *E. v. Justices of Staffordshire*, 4 Ad. & El. 842. *R. v. St. Clements*, 12 Ad. & El. 177. The next sessions means the next practicable sessions. *E. v. JJ. of Essex*, 1 B. & Ald. 210. Fourteen clear days' notice must be given in writing signed by the appellant. 12 & 13 Vict. c. 46, s. 1.

## CLERGYMEN OF THE PARISH.

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*Clergy, incumbents.]* The clergy more immediately connected with the parish are rectors, vicars, or perpetual curates. A rector is a term synonymous with parson, who is the representative of the church, and a sole corporation, in whom is vested the freehold of the church and churchyard, parsonage house, glebe and tithes, so far as not appropriated. The office of vicar was originally subordinate to that of rector, and a kind of substitute dependant on the rector's caprice, but by the stat. 4 Hen. 4, c. 12, he is now sufficiently endowed, usually with a portion of the glebe or land belonging to the parsonage. The distinction between a rector and a vicar at the present day is that the rector generally has the whole right to all the ecclesiastical dues within the parish, and the vicar is entitled only to a certain portion of those profits, the best part of which are absorbed by the appropriator. A perpetual curate owed the origin of his office to the dissolution of monasteries, when single persons were the appropriators, and as such were obliged to nominate some person to serve the cure, who came to be called, as he was in fact, perpetual curate, since he could not be removed at the caprice of the appropriator. A perpetual curate has an interest for life in his

curacy in the same way as a rector or vicar. A lecturer is a spiritual person licensed to read the service in a parish church at other times than those when the incumbent or his curate officiates. Lectureships are generally endowed, and according to the foundation sometimes the vestry or chief inhabitants have the election, otherwise it would be for the incumbent to nominate him. But the bishop must licence the lecturer, and the assent of the incumbent of the parish is also necessary, though it is not clearly settled how far the incumbent could capriciously withhold his assent. If the bishop conscientiously refuse to licence, there is no mode of compelling him to do so. The bishop has also the power of revoking the licence of the lecturer.

*Ordination.*] Ordination is the qualification of a priest, and is the step by which he is set apart from the rest of the people and admitted into the church under holy orders. The first stage is the admission to be a deacon, which the bishop may effect when satisfied that he is of virtuous conversation and sufficiently learned. No person is admitted a deacon till he is twenty-three years old, nor admitted to be a priest till he is twenty-four years old. 18 Eliz. c. 12. 44 Geo. 3, c. 34. In order to be admitted to holy orders the candidate must have a title, *i. e.*, he must have a certain place where he may use his function, such as a presentation to some ecclesiastical preferment, a certificate that he is to fill some vacant place, or that he is a fellow of a college. Canon 33. The candidate must be fully qualified as to learning, of which the bishop is the sole judge. The candidate must also take certain oaths, and subscribe the articles of religion. It is always discretionary in the bishop to admit to holy orders, and no person, however well qualified, can compel the bishop to ordain him.

*Advowson.*] An advowson is the right of presenting to a church or ecclesiastical benefice (2 *Bl.* 21; 3 *Cr. t.* 21, c. 1, ss. 4, 5,) upon any vacancy which may occur during the continuance of the party's title. It is said to be appendant when the right is annexed to a manor, and always passes with it; 2 *Bl.* 22; 3 *Cr. t.* 21, c. 1, ss. 8-11, or in gross when it is not so annexed, but has been separated from it. 2 *Bl.* 22; 3 *Cr. t.* 21, c. 1, ss. 12-18.

Advowsons are also said to be presentative, collative, and donative:—presentative, where the patron has the right to present to the bishop or ordinary, and to demand of him that he institute his clerk, if he find him canonically qualified; 2 *Bl.* 22; 3 *Cr. t.* 21, c. 1, s. 19;—collative, where the

bishop and patron are one and the same person; 2 *Bl.* 22; 3 *Cr. t.* 21, c. 1, s. 20;—donative, where the Queen, or any subject by her licence, founds a church or chapel, and ordains that it shall be in the gift or disposal of the patron, subject to his visitation only and not that of the ordinary, and vested absolutely in the clerk by the patron's deed of donation, without presentation, institution or induction, (2 *Bl.* 23; 3 *Cr. t.* 21, c. 1, s. 21,) but which ceases to be donative, if the patron, waiving his right of donation, present at any time a clerk to the bishop. 2 *Bl.* 23, 24; 3 *Cr. t.* 21, c. 1, s. 22.

An advowson, like all other incorporeal hereditaments, is not capable of corporeal seisin or possession; but until the church becomes void, it is impossible to acquire in it anything more than a seisin in law; 3 *Cr. t.* 21, c. 1, s. 23; and therefore in pleading any incorporeal hereditament, we do not say that the owner is seised in *his demesne* as of fee, but merely that he is seised as of fee and right, omitting the words "in his demesne."—*Arch. Pl. & Ev.* 121. In other respects, a person may have the same estate in an advowson as in a corporeal hereditament,—he may be tenant in fee simple, having the right of presentation in him and in his heirs for ever;—or he may be tenant in tail, having the right of presentation in himself and his issue;—or he may have it for life or years;—he may be entitled to it in possession, remainder or reversion;—and it may be holden in joint tenancy, coparcenary or in common. 3 *Cr. t.* 21, c. 1, ss. 24, 25. A husband may be tenant by the curtesy of an advowson, even although the church have not been void during the coverture. *Id.* ss. 26–28. So, a widow may be tenant in dower of an advowson: if it be an advowson in gross, she is entitled to the third presentation; *Id.* ss. 29, 30; if an advowson appendant, and she be endowed of the manor, she shall be entitled to it of course, and if the church become vacant during the continuance of her estate, she may present to it, or if she be endowed of the third part of the manor, the third part of the advowson shall pass. *Id.* s. 29. Advowsons may be extended under an elegit; 1 & 2 *Vict. c.* 110, s. 13; and are assets for payment of debts. 3 *Cr. t.* 21, c. 1, ss. 40–42.

*Presentation, institution, and induction.*] When a vacancy occurs in a parsonage or vicarage, the patron, to whom the advowson of the church then belongs, may present his clerk, that is to say, may offer his clerk to the bishop of the diocese to be instituted. 1 *Bl.* 389; 3 *Cr. t.* 21, c. 2, ss. 1–3. The bishop however may refuse him,—either in case the patron be excommunicated and remains in contempt forty days (*Bl.* 389),—or where the clerk himself is deemed unfit for the sacred

office, as being an outlaw, or under age, or being objectionable in respect of faith or morals, or as being deficient in learning. 1 *Bl.* 389, 390; 3 *Cr. t.* 21, c. 2, ss. 46-48. The bishop is the sole judge of these qualifications. If, on the contrary, the bishop declare that he approves of the presentee, the clerk is then said to be admitted. 3 *Cr. t.* 21, c. 2, s. 4. The clerk is next instituted, that is to say, the cure of souls is committed to him by the ordinary, and which ceremony is performed thus: the clerk kneels before the ordinary, while the latter reads the words of the institution, out of a written instrument drawn up for the purpose, with the episcopal seal appendant to it, which instrument the clerk holds in his hand during the ceremony. 3 *Cr. t.* 21, c. 2, s. 5. It is not necessary that the institution, examination, or admission take place within the diocese where the church is.

The induction next follows, being the investiture of the temporal part of the benefice, as institution is of the spiritual. It is done by mandate from the bishop to the archdeacon, who usually issues a precept to other clergymen to perform it for him: and the ceremony is thus,—the inductor and clerk being at the church, the former takes the clerk's hand and lays it upon the ring of the church door, and says to this effect,—“by virtue of this mandate, I do induct you into the real, actual and corporeal possession of the church of C., with all the rights, profits and appurtenances thereunto belonging;” the inductor then opens the door, puts the clerk into the church, and the latter usually tolls the bell, to make his induction known to his parishioners *Id.* ss. 7, 8. This completes the clerk's title: before presentation he has no right; by presentation, he acquires a right to the benefice; by institution, he acquires a right to enter on the glebe, take the tithes, &c.; and by induction he acquires a right to sue in respect of them. *Id.* s. 6. He is *quasi* tenant for life; and if he manure and sow with corn any part of his glebe, he will be entitled to emblements, and they will pass by his will. 1 *Cr. t.* 3, c. 1, ss. 55, 56. Though induction gives a legal title to the benefice, yet the incumbent must read himself in, *i. e.* read the service within two months after induction, and declare his consent to the Book of Common Prayer; which must be done under a penalty. A certificate of his reading in is given by the churchwardens.

*Who entitled to present.*] As to the party entitled to present the clerk;—the tenant in fee, fee tail, for life or years, if the vacancy occur in his lifetime and during the continuance of his estate, is the party to present; 3 *Cr. t.* 21, c. 2, ss. 18, 19; if he die after the vacancy and before presentation, the right



(being deemed a chattel real) goes to his executors or administrator, not to his heir. *Id.* s. 20. So, where a person has a grant of the next presentation, this is a chattel real; and if there be no vacancy during his lifetime, the right to present goes to his executors or administrator. 3 *Cr. t.* 21, c. 2, s. 21. Infants may present. *Id.* ss. 22-24. A husband entitled in right of his wife, presents in the names of both. *Id.* s. 18. Joint-tenants and tenants in common should present jointly; if they present severally, the ordinary may refuse to admit the presentee; *Id.* ss. 25, 26; or if they make partition, they present in turns, as may have been agreed upon. *Id.* ss. 32-34; 7 *Anne*, c. 18, s. 2. Coparceners present jointly; or if they cannot agree in the presentation, they may present in turn, the eldest sister presenting first, and then the others in their order. *Id.* ss. 27-31. Mortgagors may nominate, but the mortgagee is the person to present, as he has the legal estate; *Id.* ss. 35, 36; and the same as to tenants by statute staple or statute merchant, or elegit. *Id.* s. 37. Bankrupts, when owners of an advowson or next presentation, have a right to present upon a vacancy occurring before it is sold. 3 *Cr. t.* 21, c. 2, s. 38. But an alien cannot present; *Id.* s. 39; nor a person outlawed; *Id.* s. 40; nor a Roman Catholic, the presentation to all benefices belonging to him being vested in the universities of Oxford or Cambridge. *Id.* ss. 41-44. Where a lunatic is entitled to present, the lord chancellor presents for him. *Id.* s. 45.

The right of presentation, and that of nomination to a church, are distinct things; presentation is the offering of a clerk to the bishop; nomination, an offering of the clerk to the patron for presentation. 3 *Cr. t.* 21, c. 1, s. 6. And these rights may exist in different persons: for instance, a person seised of an advowson may grant to A. and his heirs, that whenever the church becomes vacant he will present to the bishop such person as A. or his heirs shall nominate. *Id.* Or, where the legal estate in the advowson is in a trustee, and the right of nomination is in the *cestui que trust*, the one must present according to the other's nomination. *Id.* s. 7. So, where there is a mortgagor and mortgagee of an advowson, the former may nominate, but the latter must present. *Id.* s. 7; *Id.* c. 2, s. 35.

The right of presentation *pro hac vice* may be forfeited, either by lapse, or by simony.

Lapse is a species of forfeiture of the right of presentation to an ecclesiastical benefice, *pro hac vice*; if the patron do not present within six calendar months after avoidance, the ordinary may present; and if the ordinary fail to present within six calendar months after his title by lapse accrues, the metropolitan may present; and if the metropolitan neglect to pre-

sent within six calendar months after his title accrues, the Queen may present. 2 *Bl.* 276; 3 *Cr. t.* 21, c. 9, ss. 10-13. But there is no forfeiture by lapse, where the original presentation is in the crown; 2 *Bl.* 276; nor can a donative lapse to the ordinary, unless it have been augmented by Queen Anne's bounty. *Id.* On the other hand, if the bishop be both patron and ordinary, he shall not have a double time allowed to him to present, but if he do not present within the six calendar months, the metropolitan may present; and in ordinary cases if he do not present by lapse at the expiration of the six calendar months allowed to the patron, and the patron afterwards presents before the bishop, the patron's presentation will be good. *Id.* 277; 3 *Cr. t.* 21, c. 2, s. 16. Where the benefice becomes void by death, or by cession through plurality of benefices, there the patron is bound to take notice of the vacancy at his peril; but when the vacancy arises from resignation, or canonical deprivation, or if a clerk presented be refused for insufficiency, these being matters of which the bishop alone is supposed to be cognizant, the law requires him to give notice thereof to the patron, otherwise he shall not avail himself of the lapse. 2 *Bl.* 278; 3 *Cr. t.* 21, c. 2, ss. 14, 15. Also, if the bishop refuse or neglect to examine and admit the patron's clerk, without good reason assigned or notice given, he shall not present by lapse. 2 *Bl.* 278. And lastly, if the right of presentation be contested, and an action brought to try the right, there shall be no lapse until the question is decided. *Id.*

*Simony.*] Simony is the corrupt presentation of any person to an ecclesiastical benefice, for money, gift or reward, or promise thereof; *Id.* 278; such presentation is void, the right of presenting *pro hac vice* is forfeited to and vested in the crown, (2 *Bl.* 278; 3 *Cr. t.* 21, c. 2, ss. 52-68,) and the presentee is for ever after incapable of enjoying the same benefice. 31 *El. c.* 6. But if the presentee die, without being convicted of such simony in his lifetime, the simoniacal contract shall not prejudice any other innocent patron, on pretence of lapse to the crown or otherwise. 1 *Wm. & M. c.* 16. Also, if any person, for money or profit, shall procure in his own name or the name of any other the next presentation to any benefice, and shall be presented thereupon, this is a simoniacal contract, and the party is not only liable to all the ecclesiastical penalties for simony, but is disabled from holding the benefice, and the presentation devolves to the crown. 12 *Anne, st.* 2, c. 12. *Fox v. Bp. of Chester*, 2 *B. & C.* 635. But if a father purchase a next presentation for his son, (2 *Bl.* 280,) or even if a person purchase it for a stranger, (3 *Cr. t.* 21, c. 2, s. 69,) it is not simony unless the then incumbent be *in extremis*; *Id.* s. 70;

or if a simoniacal contract be made with the patron, without the privity of the clerk,—although the presentation for that term shall devolve to the crown, as a punishment to the guilty patron, yet the clerk, who is innocent, does not incur any disability or forfeiture. 2 *Bl.* 280. But a purchase of the whole advowson, although the then clerk be *in extremis*, is not simony. 3 *Cr. t.* 21, c. 2, s. 71. Also, although general bonds to resign at the patron's request have been holden void (*Bishop of London v. Efythe*, 2 Bro. B. C. 811; 3 *Cr. t.* 21, c. 2, ss. 78–80), yet the bonds to resign in favour of the patron's son or other relation, when ordained, are good. 2 *Bl.* 280. 7 & 8 Geo. 4, c. 25; 9 Geo. 4, c. 94. See also, *post*, "Clergy—Resignation."

*Sale of advowsons.*] By stat. 19 & 20 Vict. c. 50, s. 1, after reciting that it is expedient to authorize the sale of advowsons in cases where the same are vested in, or in trustees for, inhabitants, ratepayers, freeholders, or other persons forming a numerous class, and deriving no pecuniary advantage therefrom, in order that the monies arising from such sales may be applied to the erection, rebuilding, or improvement (where necessary) of parsonage houses, and to the augmentation of the livings (where the same are small), and to other beneficial purposes as hereinafter provided; and that other powers should be conferred upon such persons; it is enacted as follows:—Unless there be something in the subject or context repugnant to or inconsistent with such construction, the following words shall have in this section and elsewhere in this Act the respective meanings hereby assigned to them; that is to say,

The word "advowson" means an advowson vested in inhabitants, ratepayers, freeholders, or other persons, forming a numerous class, or in trustees appointed by or acting on behalf of such persons, such persons deriving no pecuniary advantage from the exercise of such right, but does not mean an advowson belonging to any endowed charity within the provisions of "the Charitable Trusts Act, 1853," and "the Charitable Trusts Amendment Act, 1855," or either of them:

The word "owners" means the inhabitants, ratepayers, freeholders, or other class of persons in whom, or in trustees for whom, an advowson is vested, such persons deriving no pecuniary advantage therefrom:

The words "existing trustees" mean the trustees in whom for the time being an advowson is vested, by virtue of any Act of Parliament, deed, or other instrument, in trust for or on behalf of such owners, and includes the survivors and survivor of such trustees:

The words "elected trustees" mean the persons appointed by the owners under the provisions of this Act to effect the sale of an advowson, and includes the survivors and survivor of such trustees:

The word "trustees," without the addition of the words "existing" or "elected," includes both classes of trustees hereinbefore defined:

The word "incumbent" means the rector, vicar, or perpetual curate, as the case may be, of a church or ecclesiastical benefice, the advowson of which is to be dealt with under this Act, and includes the officiating clergyman for the time being if the incumbent reside abroad or be incapable of acting. 19 & 20 Vict. c. 20, s. 1.

The owners of an advowson may direct the sale of such advowson; and the incumbent for the time being of the church or benefice, if required in writing by ten owners, shall convene a meeting of the owners, to be held at some convenient place near to the church, for the purpose of deciding whether or not such advowson shall be sold; and every such meeting shall be called by public advertisement, to be inserted once at least in four consecutive weeks in some newspaper circulating in the county and neighbourhood in which such church shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting, and notice of such meeting shall also, not less than fourteen days prior to the holding thereof, be affixed upon the door of such church. *Id.* s. 2. At the meeting so called the incumbent for the time being (if present) shall be chairman, and if he be absent, then one of the owners present, being appointed by the other owners present, shall be the chairman, and the decision of the majority of the owners then present shall bind the minority and all absent parties. *Id.* s. 3. Such meeting shall consider and determine the question whether the advowson shall be sold, and if that question be resolved in the affirmative, the existing trustees (if such there be) shall be the persons to execute the purposes of this Act; but if there be no existing trustees, the owners shall proceed to appoint at that meeting, or at some adjournment thereof, not less than five nor more than eleven persons, being owners, to be "elected trustees" for the purposes of this Act, and the incumbent for the time being shall be *ex officio* an "elected trustee" in addition to the trustees so appointed. *Id.* s. 4. A certificate under the hands of two justices (not being themselves owners) having jurisdiction in the parish, township, district, or place within which the church or benefice in question is situate, certifying that the consent of the owners to a sale of the advowson has been duly obtained, and (in those

cases where it is necessary that "elected trustees" be appointed) containing the names, residences, and description of the "elected trustees," shall be sufficient evidence of such consent and of such appointment, and any two justices having jurisdiction as aforesaid are hereby authorized and required, on application to them made, and on being duly satisfied of the truth of the facts, to certify accordingly. *Id.* s. 5. Immediately upon the grant of such certificate the advowson shall become absolutely vested in the trustees for the purpose of effecting such sale, freed from all the uses, trusts, and declarations for the benefit of, or otherwise relating to the owners then affecting the same, but subject to the right, title, estate, or interest (if any) of every other person therein; and the trustees shall, as soon thereafter as conveniently may be, sell the advowson by public auction or by private contract, and subject to any special conditions, as to them shall seem expedient, and may buy in the same at any auction, and resell the same by public auction or by private contract, without being answerable for any loss which may happen by such resale, and shall have full discretion in the premises, and may execute and do all contracts, deeds, and other acts necessary for affecting such sale. *Id.* s. 6. Any conveyance of an advowson in pursuance of this Act shall be by deed (duly stamped) under the hands and seals of any three of the trustees, in which the consideration shall be truly stated. *Id.* s. 7. The receipt in writing of three of the trustees for any money paid to them by a purchaser of the advowson shall be an effectual discharge to such purchaser for the sum which in such receipt shall be acknowledged to be received, and such purchaser shall not be obliged to see to the distribution of such money, or be otherwise answerable or accountable for the loss, misapplication, or nonapplication thereof. *Id.* s. 8.

The monies to be received by the trustees from or by means of such sale shall be applied by them in the following order:

1st. In payment of the costs, charges, and expenses occasioned by any meeting of owners as aforesaid, and by the execution of the powers by this Act conferred upon the trustees, or incident thereto, respectively:

2nd. If there be no parsonage house attached to the advowson so sold, or if the parsonage house attached thereto be dilapidated or insufficient, then in payment of the expense of erecting a parsonage house, and of providing a site for the same, or in the reconstruction or repair of the existing parsonage house, or in making any requisite

additions thereto, as the circumstances of the case may require :

- 3rd. If the living be under the gross yearly value of 150*l.* then in investing a sum sufficient to produce an annual income which, together with the existing annual income, will raise the yearly value of the living (exclusive of the parsonage house) to not exceeding 150*l. per annum* :
- 4th. If the fabric of the church be in such a state as to require immediate repair, then in the expenditure upon the fabric of a sum sufficient to place the same in sufficient repair :
- 5th. In the investment of a sum the annual income whereof will, in the opinion of the trustees, be sufficient to maintain the fabric of the church in complete repair :
- 6th. In the erection of schools in connexion with the church, or of a chapel of ease in the parish, township, ecclesiastical district, or place in which such church is situate, or of a parsonage house to a chapel of ease, or in providing a site for a chapel of ease or parsonage house, or in the endowment of a chapel of ease, or in contributing to such objects or any of them, as the trustees may in their discretion see fit :
- 7th. If there be no such purposes to which such monies are applicable, or if there be a surplus of such monies after answering such purposes, then such monies, or the surplus thereof, as the case may be, shall be invested, and the annual income thereof shall be applied, in aid of the rates levied for the relief of the poor of the parish, township, or place in which the church is situate, or in aid of any improvement rate levied therein :

Provided always, that the owners at any meeting convened and held in manner hereinbefore provided may determine that any one or more of the objects mentioned in the fifth, sixth, and seventh heads of application respectively shall have priority over any other object mentioned in those heads. [*Id.* s. 9.]

The trustees shall from time to time invest any monies by this Act directed to be invested by them in the purchase of any government or Bank of England or East India Company's stock or securities, or on mortgage of freehold or copyhold lands in England or Wales, or in the mortgages or bonds of any company incorporated by special Act of Parliament, as they may deem fit. [*Id.* s. 10.]

The concurrence of two-thirds at least of the whole number of trustees shall be necessary to give effect to any resolution of the trustees, and every resolution of the trustees in which that number shall concur shall be binding upon the

other trustees, and upon the owners on whose behalf such trustees are authorized to act. [*Id.* s. 11.] If any of the trustees before the complete execution of the trusts by this Act devolved upon them, should become incapable or unwilling to act, or reside abroad, the vacancies may, in the case of existing trustees, be supplied in the manner provided by the Act of Parliament, deed, or instrument regulating their proceedings; and in the case of elected trustees the vacancies may be supplied by the owners at any meeting convened and held in manner hereinbefore provided with respect to the convening and holding of a meeting of owners for the purpose of consenting to the sale of an advowson; and a certificate of two such justices as aforesaid, and which such justices, on being satisfied of the truth of the facts, are hereby authorized and required to grant, that such vacancies have been supplied, and containing the names, residences, and descriptions of the new trustees, shall be conclusive evidence of the facts, and thereupon such new trustees shall have the same property, rights, and powers in and with respect to the advowson as the trustees in whose place they were appointed. [*Id.* s. 12.] Trustees acting by virtue of this Act shall not be answerable or accountable for the acts, neglects, or defaults of any co-trustee, or for any agent or banker appointed by the trustees, or for any loss, except such as shall happen through their own wilful act, negligence, or default. [*Id.* s. 13.] In case of the death, cession, or resignation of any incumbent of a benefice after the owners shall have directed the advowson of such benefice to be sold, but before the sale shall have been effected, then the persons in whom the right of presentation and nomination would but for this Act have been vested shall (under and subject to the conditions under which such right would but for this Act have been exercised) present and nominate a person to such benefice as if this Act had not been passed. [*Id.* s. 14.]

The owners of an advowson, at a meeting convened and held in manner hereinbefore provided with respect to the convening and holding of a meeting of owners for the purpose of consenting to the sale of an advowson, may consent to the borrowing of money from "the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy," or from any other society or persons, for the purposes authorized by the Acts 17 Geo. 3, c. 53; 21 Geo. 3, c. 66; 7 Geo. 4, c. 66; 1 & 2 Vict. c. 23, as fully and effectually as any patron absolutely entitled to an advowson not within the provisions of this Act may lawfully do. [*Id.* s. 15.] The certificate of two such justices as aforesaid, which they are hereby authorized and required to grant on being satis-

fied of the truth of the fact, that such consent has been duly given, shall be conclusive evidence of the fact, and such certificate shall, for all purposes whatever, be deemed the consent of the patron within the meaning of those Acts. [*Id.* s. 16.]

Power was also recently given to the lord chancellor to sell certain advowsons formerly vested in him, and apply the proceeds to improve the benefices. 26 & 27 Vict. c. 120.

*Tithes.*] Tithes are defined to be the tenth part of the increase, arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants. 2 Bl. 24. 3 Cr. t. 22, s. 2. Those arising immediately from the profits of lands are called predial tithes; those from the stock upon lands, mixed tithes; and those from the personal industry of the inhabitants, personal tithes. 3 Cr. t. 22, s. 6. Tithes are also divided into great and small tithes: the great tithes comprising those of corn, hay and wood, which are predial tithes; the small tithes comprising those of the less valuable matters, such as hops, potatoes, madder, wood, (predial tithes,) and all mixed and personal tithes; 3 Cr. t. 22, s. 7;—the distinction, in the case of predial tithes, arising from the nature of the titheable matter, and not from the quantity of it cultivated in the particular parish. [*Id.* ss. 8, 9.]

Predial tithes are due of common right. *Id.* s. 10. They comprise all kinds of corn; and also beans, peas, &c. when cultivated, whether set, drilled, sown, or planted in rows; but if sown in a garden in like manner they are accounted small tithes. 3 Cr. t. 22, ss. 15–17. Hay is a predial tithe, whether made for sale, or consumed upon the farm; *Id.* s. 18; so are clover, saintfoin, rye grass, tares, vetches, &c.; *Id.* s. 20; even a second crop of clover, or the grass of aftermath if cured and made into hay, are titheable; *Id.* ss. 19, 20; but if grass or clover be cut down, and whilst it is in swarth the farmer give it to his plough cattle; *Id.* s. 18; or if tares or vetches be cut green and given as food to milch cows or horses employed in husbandry, (*Id.* s. 20,) they are not titheable. Underwood (*sylva cadua*), comprising birch, hazel, willow, sallow, alder, maple, whitethorn, and all other trees not accounted timber by the custom of the country, together with fruit trees,—unless employed in repairing the carts and ploughs used in husbandry,—are titheable, as a predial tithe; great wood (comprising oak, ash, elm, beech, and every other tree which is deemed timber by the custom of the country) of the age of twenty years, or of greater age, is not titheable. 45 Ed. 3, c. 3. 3 Cr. t. 22, ss. 21–30. Hemp and flax are



also a predial tithe, but the tithe payment is limited to 5s. an acre. 11 & 12 Will. 3, c. 16, *made perpetual* by 1 Geo. 1, st. 2, c. 26, s. 2. Madder is also titheable. 3 Cr. t. 22, s. 3. Hops are a predial tithe, but are deemed a small tithe; *Id.* s. 32; so are potatoes. *Id.* s. 8. Turnips are titheable, when severed, even although sown after corn; *Id.* s. 38; so, an agistment tithe was holden to be due for turnips sown after corn, and not severed, but eaten by unprofitable cattle; *Id.* s. 41; and now, by stat. 5 & 6 Will. 4, c. 75, reciting that "it is frequently convenient and necessary in the agistment of turnips by sheep or cattle, to sever the turnips from the ground in order that they may be more easily and completely consumed, and thereby to prevent waste, and it is not reasonable that such severance should vary or affect the payment of tithe,"—it is enacted that "in all cases where turnips shall be severed in the manner and for the purpose aforesaid, and shall be eaten on the ground by sheep or cattle, and not otherwise removed, the same shall be subject to the payment of tithe in the same manner and to the same extent as if they had been eaten by such sheep or cattle without having been so severed as aforesaid, and no further or otherwise." Garden plants and herbs, such as cabbage, parsley, &c., and the fruits of trees, are also a predial tithe, but a small tithe; *Id.* s. 34; hothouse plants not. *Id.* s. 35. And lastly, agistment tithe, which is a predial tithe arising from the agistment or pasturage of cattle, is payable of common right by the occupiers of the land, not by the owners of the cattle, and has been decided to be a small tithe; 3 Cr. t. 22, ss. 36, 40; it is payable, however, only for dry or barren cattle, which yield no profit to the parson, (*Id.* s. 37,) and not for cattle kept for the plough or pail in the parish, for the parson has tithe of them in another way, *Id.*; nor for horses kept for husbandry, or saddle horses, coach horses, or other horses used merely for pleasure; *Id.* s. 38; nor in respect of meadow land which has paid tithe hay; *Id.* s. 39; but we have seen (*supra*) that it is payable in respect of turnips sown after corn, and not severed, but eaten by unprofitable cattle.

Mixed tithes are those which arise, not immediately from the profit of the land, but from the produce and increase of animals nourished by it. They consist of the tenth of the young cattle,—calves, lambs, pigs, &c.,—bred in the parish, and the time of payment is when the animals are weaned, and can live without their dam; 3 Cr. t. 22, s. 42; also, the tenth of the wool of sheep and lambs, at the time of clipping; *Id.* s. 43; also the tenth of the milk, and of the cheese where the tithe of milk is not paid in kind. *Id.* s. 44. These, however, are payable, not of common right, but by custom merely,

and where they have not been usually paid, they are not demandable; *Id.* s. 10.

As to personal tithes,—it is enacted by stat. 2 & 3 Ed. 6, c. 13, s. 7, that “every person exercising merchandises, bargaining and selling, clothing, handicraft or other art or faculty, being such kind of persons and in such places as heretofore within these forty years have accustomedly used to pay such personal tithes, or of right ought to pay (other than such as are common day labourers), shall yearly, at or before the feast of Easter, pay for his personal tithes, the tenth part of his clear gains,—his charges and expenses, according to his estate, condition or degree, to be therein abated, allowed and deducted.” These personal tithes, however, are not payable of common right, but by custom merely; and where they have not been usually paid, they are not demandable; they are scarcely anywhere paid at present, except for mills, and for fish caught in the sea. *Id.* s. 46, and see 2 & 3 Ed. 6, c. 13, ss. 8, 9, 11.

There are several things, however, which are not titheable, or titheable *sub modo* only. Quarries of stone or slate, mines of tin, lead, coal, lime, chalk, marl or the like, are not titheable, unless by custom, for they are of the substance of the earth, and not an annual produce. 3 Cr. t. 22, s. 47. Houses are not titheable, unless by custom, or (as in the city of London) by Act of Parliament. *Id.* s. 48; and see 2 & 3 Ed. 6, c. 13, s. 12. Forest lands in the hands of the Queen or her lessee, are not titheable; but if disafforested, the land is titheable. *Id.* s. 49. By stat. 2 & 3 Ed. 6, c. 13, s. 5, all barren heath and waste ground, which is improved and converted into arable or meadow, shall not pay tithes for seven years after such improvement. *Id.* s. 50; see *Warwick v. Collins*, 5 M. & S. 166. And lastly, for animals *feræ naturæ*, such as deer, rabbits, &c., tithe is not due at common law; but by the custom of many places, some animals of this kind are titheable. 3 Cr. t. 22, s. 51.

*To whom tithes payable.*] The tithes of common right belong to the rector of the parish, who is either the actual incumbent, or the appropriator of the benefice. 2 Bl. 26-28. Where there is an actual incumbent, he is entitled to the whole of the tithes, great and small. Where there is an appropriator, a vicar is appointed to perform the spiritual duties of the parish, and to him are assigned a certain portion of the tithes (usually the small tithes only) as is specified in the endowment of the vicarage, the appropriator being entitled to the rest, namely the great tithes;—and which tithes are hence distinguished by the names of Rectorial and Vicarial tithes. Benefices might, and may still, be appropri-

ated to some spiritual corporation, sole or aggregate (being the patron of the living),—by the Queen's licence, and the consent of the bishop of the diocese; and in this manner the religious houses formerly became appropriators of a great number of livings. These, upon the dissolution of the monasteries in the reign of Henry the Eighth, came into the hands of the king, and by him were granted to lay persons; which is the origin of the present lay appropriations. 1 *Bl.* 384–388. 3 *Cr. t.* 22, ss. 52–58, 62–67.

There remain to be noticed certain owners of tithes called portionists. Formerly every person in a diocese might pay his tithes to what parson he pleased within it, or he might pay it to the bishop to be distributed by him amongst his clergy. The custom thus originated has not been wholly eradicated, but in some instances (though very rare), there are portions of tithes in one parish which belong to the parson of another parish, and which latter parson is thence called a portionist. 3 *Cr. t.* 22, ss. 59, 92–98. 2 *Bl.* 26, 27.

In those places which are not within a parish, as in forests and the like, the Queen is entitled to the tithes. 3 *Cr. t.* 22, s. 60. And the lord of a manor may be entitled to the tithes of the manor, by prescription. 3 *Cr. t.* 22, s. 61.

*Exemptions from tithe.]* Lands and their occupiers may be exempted, wholly or in part, from the payment of tithes, either by composition real,—or by prescription *de modo decimando*,—or by prescription *de non decimando*,—or by Act of Parliament,

1. By composition real.—A composition real is an agreement between the owner of lands, and the parson or vicar, with the consent of the ordinary and the patron, that such lands shall thereafter be discharged from the payment of tithes, in consideration of certain lands or other real recompense given by the owner to the parson in lieu and in satisfaction thereof. 2 *Bl.* 28; 3 *Cr. t.* 22, s. 71; and see 2 & 3 Ed. 6, c. 13, s. 4. This was a good discharge of the lands from tithes for ever, according to the terms of the agreement; and such compositions continued to be made until the 13th year of the reign of Queen Elizabeth, when parsons and vicars were prevented from making any conveyances of the estates of their churches, other than for three lives or twenty-one years. 13 Eliz. c. 10. Notwithstanding this statute, however, there have been several decrees of courts of equity confirming such compositions made since the statute, with the consent of the ordinary and patron, but they were not deemed binding on succeeding incumbents, (3 *Cr. t.* 22, s. 72,) until by a late statute, 2 & 3 Will. 4, c. 100, s. 2, it was enacted that “every composition for tithes, which hath been made or confirmed

by the decree of any court of equity in England, in a suit to which the ordinary, patron, and incumbent were parties, and which hath not since been set aside, abandoned or departed from, shall be, and the same is hereby confirmed and made valid in law." And by the same statute (sect. 1), all claims to any exemption or discharge of tithes by composition real or otherwise (where the render of tithes in kind should thereafter be demanded on the part of the king, or the Duke of Cornwall, or any lay person, not being a corporation sole, or any body corporate of many whether temporal or spiritual), shall be sustained and be deemed good and valid in law, upon evidence showing the enjoyment of the land, without payment, or render of tithes, money, or other matter in lieu thereof, for the full period of *thirty* years next before the time of such demand,—unless the render or payment of tithes, or of money or other matter in lieu thereof, shall be shown to have taken place at some time prior to such thirty years, or it shall be proved that such enjoyment was had by some consent or agreement expressly given or made for that purpose by some deed or writing; and if proof in support of the claim be extended to the full period of *sixty* years next before the time of such demand, in such case the claim shall be deemed absolute and indefeasible, unless it be proved that such enjoyment was had by some consent or agreement expressly given or made for that purpose by deed or writing:—And the same, where the demand of tithes in kind shall be made by any archbishop, bishop, dean, prebendary, parson, vicar, master of hospital, or other corporation sole, whether spiritual or temporal, upon proof of such enjoyment as aforesaid had during the whole time that two persons in succession shall have held the office or benefice in respect of which the tithes are claimed, and three years after the appointment of a third; or if that time be less than sixty years, then for and during sixty years. But by sect. 2, no exemption shall be deemed to be within this Act, unless it be proved to have existed and been acted upon at the time of, or within one year next before, the passing of the Act, namely, the 9th August, 1832.

2. By prescription *de modo decimando*.—The regular mode of rendering the tithe to the parson or vicar is, to render it in kind. But a mode of tithing (*modus decimandi*, or *modus*, as it is usually called) might be, and may still be agreed upon between the parson and the tithe-payer; and before the statute of the 13 Eliz. c. 10, above alluded to, it might, with the consent of the patron and ordinary, be made in perpetuity, to bind the successors of the parson. And if it could be proved that from time immemorial a particular mode of tithing was used between the parson of any parish and a tithe-payer in it,

the law presumed a grant or deed by which such modus was established; and such immemorial custom was deemed a good defence for the tithe-payer, if the parson at any time insisted on the ordinary payment in kind. 8 Cr. t. 22, ss. 75, 76. But by stat. 2 & 3 Will. 4, c. 100, s. 1, all prescriptions and claims of or for any *modus decimandi* (where the render of tithes in kind should thereafter be demanded on the part of the king, or the Duke of Cornwall, or any lay person not being a corporation sole, or any body corporate of many whether temporal or spiritual), shall be sustained and be deemed good and valid in law, upon evidence showing the payment or render of such modus for the full period of *thirty* years next before the time of such demand,—unless the actual payment or render of tithes in kind, or of money or other thing differing in amount, quality or quantity from the modus claimed, shall be shown to have taken place at some time prior to such thirty years, or it shall be proved that such payment or render of modus was made by some consent or agreement expressly given or made for that purpose by some deed or writing; and if proof in support of the claim be extended to the full period of sixty years next before the time of such demand, in such case the claim shall be deemed absolute and indefeasible, unless it be proved that such payment or render of modus was made by some consent or agreement expressly given or made for that purpose by deed in writing:—And the same, where the demand of tithes in kind shall be made by any archbishop, bishop, dean, prebendary, parson, vicar, master of hospital or other corporation sole, whether spiritual or temporal, upon proof of such payment or render of modus as aforesaid made during the whole time that two persons in succession shall have held the office or benefice in respect of which the tithes are claimed, and three years after the appointment of a third; or if that time be less than sixty years, then for and during sixty years. But by sect. 2, no modus shall be deemed to be within this Act, unless it be proved to have existed and been acted upon at the time of, or within one year next before, the passing of the Act, namely, the 9th August, 1832.

To render a modus valid, however, the following rules must be observed: 2 Bl. 29, 30:—1. It must be certain and invariable.—2. The thing given in lieu of tithes must be beneficial to the parson, and not for the emolument of a third person only; thus a modus to repair the church in lieu of tithes is not good, because that is an advantage to the parish only; but to repair the chancel is a good modus, for that is an advantage to the parson.—3. It must be something different from the thing compounded for; one load of hay

instead of all tithe hay, is not a good modus; for no parson would, *bond fide*, make a composition to receive less than his due in the same species of tithe, and therefore the law will not suppose it possible for such composition to have existed.—4. One cannot be discharged from payment of one species of tithe, by paying a modus for another; thus a modus of 1*l.* for every milch cow, will discharge the tithe of milch kine, but not of barren cattle, for tithe is due for both.—5. The recompense must be in its nature as durable as the tithes discharged by it, that is, an inheritance certain; and therefore a modus that every inhabitant of a house shall pay 4*d.* a year in lieu of the owner's tithes, is not a good modus; for possibly the house may not be inhabited, and then the recompense will be lost.—6. The modus must not be too large, which is called a rank modus; as if the real value of the tithes be 60*l.* a year, and a modus of 40*l.* is set up, this will not be established, although one of 40*s.* might: for as the agreement for the modus is supposed to have taken place before the time of legal memory, (which is reckoned from the beginning of the reign of Richard the First,) it is impossible that the tithes could have been worth so much at that time; so that the very nature of the claim would refute it.

3. By prescription *de non decimando*. This exemption is either personal, or annexed to the land.

The Queen, by her prerogative, pays no tithe. A vicar pays no tithe to the rector, nor the rector to the vicar. But these personal privileges, not arising from or being annexed to the land, are personally confined to the Queen and the clergy; for when their land is in the occupation of a tenant or lessee, such tenant or lessee shall pay tithes for it. 2 *Bl.* 31. 3 *Cr. t.* 22, ss. 77–80.

In some instances the land itself is exempt from tithe,—which arose in this way. Spiritual persons or corporations, as monasteries, abbots, bishops and the like, were capable of having their lands discharged of tithes, by various ways:—1. By real composition. 2. By the Pope's bull of exemption. 3. By unity of possession; as where the rectory of a parish, and lands in the same parish, both belonged to a religious house, those lands were discharged of payment of tithes by this unity. 4. By prescription, having never been liable to tithes, by the lands being always in spiritual hands. 5. By virtue of their order, as Knights Templars, Cistercians and others, whose lands were privileged by the Pope with a discharge of tithes. And when the greater abbeys were dissolved in the reign of Henry the Eighth, it was enacted by the statute (31 Hen. 8, c. 13) that all persons who should come to the possession of the lands of any abbey then dissolved, should

hold them free and discharged of tithes, in as large and ample a manner as the abbeys themselves formerly held them. So that if a man can now show that his lands belonged to one of the abbeys then dissolved, and that they were then discharged of tithes by any of the means above mentioned, it will be a good prescription *de son decimando*. 2 Bl. 31, 32; 3 Cr. t. 22, ss. 81-84. It must be observed, however, that this extends only to lands belonging to the greater abbeys; the lesser monasteries, namely, those not having lands of the clear yearly value of 200*l.*, were previously dissolved by stat. 27 Hen. 8, c. 28, which does not contain the clause above mentioned. But independently of this, by the statute we have already noticed, (2 & 3 Will. 4, c. 100, s. 1,) extending to all "exemptions from or discharge of tithes by composition real or otherwise," all the occupier of lands in these cases has to do is, to show the enjoyment of his land "without payment or render of tithes, money, or other matter in lieu thereof," for the period mentioned in the section, adversely and under a claim of right acquiesced in by the titheowner, (*Salkeld v. Johnson*, 2 Exch. R. 289, 256,) and he will be entitled to his exemption *prima facie*, as fully as if he had given all the proofs above mentioned, formerly required.

4. By Act of Parliament.—Lands may be, and now frequently are, exempted from payment of tithe by Act of Parliament. For instance, in many of our modern Inclosure Acts, the lands inclosed are for ever freed and discharged from the payment of all tithe; and in lieu of it, a portion of the land is allotted to the spiritual or lay rector, or to the vicar, and to their successors. In some Acts of this kind, a corn-rent is substituted in the place of tithes. 3 Cr. t. 22, s. 85.

In the stat. 2 & 3 Will. 4, c. 100, s. 1, already noticed, a modus or exemption for thirty years therein mentioned, will be a good answer to any demand made for the tithe in kind. But where lands or tenements shall be held or occupied by any rector, vicar, or other person entitled to the tithes thereof, or by any lessee of any such rector, vicar, or other person, or by any person compounding for tithes with any such rector, vicar, or other person, or by any tenant of any such rector, vicar, or other person, or of any such lessee or compounder, whereby the right to the tithes of such lands or tenements may have been or may be during any time in the occupier thereof, or in the person entitled to the rent thereof, the whole of every such time or times shall be excluded in the computation of the several periods of time hereinbefore mentioned. 2 & 3 Will. 4, c. 100, s. 5. Also, the time during which any person, otherwise capable of resisting any claim to any of the matters before mentioned, shall have been or shall

be an infant, idiot, non compos mentis, feme covert or lay tenant for life,—or during which any action or suit shall have been pending, and which shall have been diligently prosecuted until abated by the death of any party or parties thereto,—shall be excluded in the computation of the periods herein-before mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible. 2 & 3 Will. 4, c. 100, s. 6. As to the mode of pleading the statute, see sect. 7. The Act however shall not extend or be applicable to any case, where the tithes of any lands, tenements or hereditaments, shall have been demised by deed for any term of life or number of years,—or where any composition for tithes shall have been made by deed or writing by the person or body corporate entitled to such tithes, with the owner or occupier of the land, for any such term or number of years,—and such demise or composition shall be subsisting at the time of the passing of this Act, and, where any action or suit shall be instituted for the recovery or enforcing the payment of tithes in kind, within three years next after the expiration, surrender, or other determination of such demise or composition. *Id.* s. 4.

*What estates may be had in them.*] The rector or vicar has an estate in the tithes for life, unless he resign the living or vicarage, or be promoted to a bishopric. But lay impropriators may be tenants in fee simple, fee tail, for life or years; 3 Cr. t. 22, s. 67; husbands may be tenants by the curtesy, and widows endowed of them; *Id.*; they are accounted assets for the payment of debts, and have all other incidents to temporal inheritances. *Id.* An estate in tithes may be held in joint tenancy, coparcenary or in common; and a partition of any of these may be obtained by a bill in equity. *Id.* ss. 67, 68.

*How tithes aliened.*] A rector or vicar cannot alien his tithes; all he can do is to resign his benefice or vicarage, and allow another to be presented and instituted. But he may lease his tithes during his incumbency, or for twenty-one years or three lives if the patron and ordinary consent to it.

Lay impropriators may alienate their estate in tithes, in the same manner as other real estates; and tithes are comprehended within the statute of uses, under the word "hereditaments." 3 Cr. t. 22, s. 69. But no good title can be made to tithes by a lay impropriator, without showing the letters patent by which the tithes, or the rectory or parsonage to which they are affixed, were granted by the crown to some lay person, that being the only mode of excluding the supposition of a claim *jure ecclesie*. The letters patent should



also be inspected, to see that no reversion remains in the crown. *Id.*

The regular mode of conveying an estate in tithes, as in all other incorporeal hereditaments, is by deed of grant. But it may be conveyed by lease and release, or bargain and sale. They might formerly be made the subject of a fine, or recovery: and at present may be made the subject of the deed which has been substituted for them. Tithes may be also leased, provided the lease be by deed. They may also be devised. A judgment also is a lien upon tithes, in the same manner as it is upon lands. The deed of grant may readily be framed from the form of a grant of a next presentation to a living; and a lease of tithes may readily be framed from the form of lease;—the tithes in both cases being described as “all those the great or rectorial tithes or tenths of and belonging to the said rectory of C., in the county of D., and issuing, growing, and arising from and out of the lands and hereditaments in the said parish;” and being referred to as “the tithes and hereditaments hereinafter [or hereinbefore] described,” &c.

*How commuted.*] By stat. 6 & 7 Will. 4, c. 71, commissioners were appointed for the commutation of tithes in England and Wales. By that Act a meeting of the landowners and titheowners in any parish may be called, and they may proceed to make and execute an agreement for the payment of an annual sum by way of rentcharge, instead of the great and small tithes of the parish; which agreement, after being communicated to the bishop of the diocese, shall be confirmed by the commissioners; and the amount agreed upon shall then be apportioned amongst the tithe-payers, by valuers appointed for the purpose: after which, the lands shall be fully discharged of tithes, and the rentcharge, if not paid, may be levied by distress. Several alterations in this Act, and additions to it, have been made by subsequent statutes, namely, by 1 Vict. c. 96,—1 & 2 Vict. c. 64,—2 & 3 Vict. c. 62,—9 & 10 Vict. c. 73,—and 10 & 11 Vict. c. 104,—14 & 15 Vict. c. 25, s. 4,—14 & 15 Vict. c. 53,—16 & 17 Vict. c. 124, and 23 & 24 Vict. c. 93, to which the reader is referred.

*How set out.*] No person shall carry away his corn, hay, or other produce of which predial tithe is payable, before he hath “justly divided or set forth for the tithe thereof the tenth part of the same;” and it shall be lawful for the parson or other person to whom the tithe is payable, “to view and see their said tithes to be justly and truly set forth and severed from the nine parts, and the same quietly to take and carry away.” 2 & 3 Ed. 6, c. 13, ss. 1, 2; *vide infra*. And the tithe must

be so set out that the titheowner may be enabled to ascertain whether his just proportion is allotted to him, and he must have a reasonable time allowed to him for that purpose. *Thompson v. Bearblock*, 1 B. & Ad. 812. And for this purpose also, the parishioner must leave his nine parts in the field a reasonable time, for the titheowner to compare the tithe with them. *Hallinell v. Trappes*, 2 Taunt. 55; 2 New Rep. 173.

Corn is tithed in the sheaf, and before it is made into shocks or riders. *Id. Shallcross v. Jowle*, 13 East, 261. *Walker v. Ridgway*, 3 Bing. 317. Hay is titheable in the grass cock, after having been tedded in the course of the process of making it into hay; *Newman v. Morgan*, 10 East, 5; it is not titheable in the swath. *Moyes v. Willett*, 3 Esp. 31. But of clover hay, the farmer may set out the tithe in the swath. *Collyer v. House*, 2 Anst. 481; 3 *Id.* 954. *Baker v. Athill*, 2 Anst. 491. Potatoes are titheable, when dug up and laid in heaps. *Bearblock v. Hancock*, 2 Car. & P. 425. Turnips, we have seen, when eaten off by stock, are an agistment tithe; but when severed for the sake of removal, they are titheable when put into heaps, or by setting out every tenth turnip, if by so tithing the titheowner has an opportunity of seeing that the tithe is fairly set out. *Clarke v. Clarke*, 2 You. & C. 245. Peas, when grown in fields and gathered green, may be tithed in sacks containing a certain quantity, the titheowner having his choice out of every ten sacks. *Fanshawe v. Brittain*, 2 You. & J. 575. Hops are titheable after they are gathered from the bind; *Knight v. Halsey (in error)*, 8 Bro. P. C. 233; 2 B. & P. 172, 206; 7 T. R. 86; and the tithe is set out by the tenthmeasure, after they are picked and before they are dried. *Tyers v. Walton*, 7 Bro. P. C. 18. Hemp and flax are titheable at 6s. per acre. 11 & 12 Will. 3, c. 16. As to the tithe of vegetables, &c. grown in a garden, for the use of a family, it is not easy, or indeed practicable, to apply to them the usual rules of tithing; it therefore requires a mutual spirit of accommodation, on the part of the vicar and the occupier, to adjust the value of the tithe; a sum of money is usually paid. *Fanshawe v. Brittain*, supra.

As to mixed tithes:—the right to the tithe of calves and lambs accrues when they are dropped, but they are not titheable until they are weaned; *Welch v. Upphill*, 1 Brod. & B. 84; *Bearblock v. Tyler*, Jacob Rep. 561; and therefore where the occupier removed lambs out of the parish immediately after they were dropped, it was holden that he was liable to pay for their value, when fit to be weaned. *Fanshawe v. Brittain*, supra. And the tenth calf in the order

of birth, is the tithe calf, where the order of birth can be ascertained. *Trotman & Carrington*, 1 Cr. & J. 320. *Carrington v. Cornock*, 4 Sim. 217.

Tithe of wool is due at shearing time, and it is a satisfaction for pasturage during the past year. — *Gold, Ambler*, 149.

As to milk, the incumbent is entitled to the milk of the tenth day, morning and evening, and not merely to the milk of the tenth meal; *Fanshawe v. Brittain*, supra; *Oullimore v. Bosworth*, 7 Bro. P. C. 57; and it is titheable in vessels at the common milking place. *Carthew v. Edwards*, Ambler, 72.

As to personal tithes:—the tithe of a mill is the tenth part of the clear profits arising from the grinding of the corn therein, over and above all incidental charges; and the corn ground therein is to be tithed by the tenth toll dish. *Chamberlain v. Newte*, 7 Bro. P. C. 3. But a miller, who only grinds his own corn, and sells the flour, is not liable to tithes for his mill. *Browne v. Woollsey*, 2 Sim. 305. *Austin v. Elphinstone*, 1 You. 597.

But in all these cases if any particular mode of tithing be agreed upon by the titheowner and the tithe-payer, that will be deemed the lawful and due manner of tithing. *Facey v. Hurdon*, 3 B. & C. 213.

If when the tithe of corn, hay, &c., is set out, the titheowner after notice do not take it away, he is liable to an action on the case, or the tithe-payer may distrain the tithes damage feasant; but the action must be case, not trespass; and the tithe-payer will not be justified in turning in his cattle on the land whilst the tithe is there. 1 *Arch. N. P.* 406.

[*How sued for and recovered.*] For tithes great and small not exceeding 10*l.*, and for the like tithes due from Quakers not exceeding 50*l.*, if not paid within twenty days after demand, a summary proceeding before two justices of the peace (neither of them being patron of the church, or interested in the tithes) is given by stat. 7 & 8 Will. 3, c. 6; 7 & 8 Will. 3, c. 34; 53 Geo. 3, c. 127, and the same may be levied by distress. See 2 *Arch. J. P.* 548, where the whole of the proceeding is detailed. And this is the only mode of proceeding for tithes of these amounts, where the title to the tithes, or the title of the defendant to exemption, is not *bond fide* in question. 5 & 6 Will. 4, c. 74, s. 1; 4 & 5 Vict. c. 36. But in cases not within these statutes, the following remedies are given.

As to the remedy at law:—By stat. 2 & 3 Edw. 6, c. 13, s. 1, “every of the King’s subjects shall from henceforth truly and justly, without fraud or guile, divide, set out, yield and pay all manner of their predial tithes in their proper kind, as they

rise and happen, in such manner and form as hath been of right yielded and paid for forty years next before the making of this Act, or of right or custom ought to have been paid; and that no person shall from henceforth take, or carry away any such or like tithes, which have been yielded or paid within the said forty years, or of right ought to have been paid, in the place or places titheable of the same, before he hath justly divided or set forth for the tithe thereof the tenth part of the same, or otherwise agreed for the same tithes with the parson, vicar, or other owner, proprietary or fermor of the same tithes,—under the pain of forfeiture of treble value of the tithes so taken or carried away.” This treble value, in all cases where the single value cannot be recovered in a summary way before two justices, as above mentioned, (5 & 6 Will. 4, c. 74, s. 1,) is recovered in an action of debt. Under the general issue, *nil debet*, the plaintiff must prove the whole of his case; and under the same plea, the defendant may not only disprove any part of the plaintiff’s case, but may give in evidence any matter of exemption,—a composition real, a modus, a prescription *de non decimando* (which however may be specially pleaded), or an exemption by statute. The verdict and judgment is for the treble value; and if the single value do not exceed twenty nobles (*6l. 18s. 4d.*) the plaintiff shall be entitled to his costs by stat. 8 & 9 Will. 3, c. 11, s. 3. See 5 & 6 Will. 4, c. 74, s. 1, *supra*.

As to the remedy in the ecclesiastical courts:—By stat. 2 & 3 Edw. 6, c. 13, s. 2, “Whensoever and as often as the said predial tithes shall be due, and at the tithing of the same, it shall be lawful to every party to whom any of the said tithes ought to be paid, or his deputy or servant, to view and see their said tithes to be justly and truly set forth and severed from the nine parts, and the same quietly to take and carry away; and if any person carry away his corn or hay, or his other predial tithes, before the tithe thereof be set forth,—or willingly withdraw his tithes of the same or of such other things whereof predial tithes ought to be paid,—or do stop or let the parson, vicar, proprietor, owner, or other their deputies or farmers, to view, take and carry away their tithes as is above said,—by reason whereof the said tithe or tenth is lost, impaired or hurt: that then, upon proof thereof made before the spiritual judge, or any other judge to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting or stopping, shall pay the double value of the tenth or tithe so taken, lost, withdrawn or carried away over and besides the costs, charges and expenses of the suit in the same,—the same to be recovered before the ecclesiastical judge, according to the King’s ecclesiastical laws.” As to the proceedings thereon, see sect. 13; and as to prohibitions, pre-

venting the court from proceeding, see sects. 14, 15. The ecclesiastical courts, however, have no jurisdiction, where a modus is pleaded; *Darby v. Cosens*, 1 T. R. 552; *French v. Trask*, 10 East, 348; 15 East, 574; or in cases where the tithe can be recovered in a summary way, before two justices, as above mentioned. 4 & 5 Vict. c. 36.

As to the remedy in a court of equity:—a very usual remedy for tithes, where any dispute arises as to the amount, or the liability of the party, is by bill in equity for an account and for a discovery; whereupon the court will decree the single value, with costs. See *Com. Dig.* tit. *Dismes*, M. 13, &c. But here also, the court has no jurisdiction in cases where the tithe can be recovered in a summary way before justices of the peace, as already mentioned. 5 & 6 Will. 4, c. 74, s. 1, *supra*.

*Rateability of tithes.*] By the Tithe Commutation Act, 6 & 7 Will. 4, c. 71, s. 69, the rentcharge now payable, instead of tithe, was made subject to all parliamentary, parochial, county, and other rates, charges, and assessments in like manner as the tithes commuted for such rentcharge had theretofore been subject. Nearly all taxes and rates have been created by Act of Parliament, and it is on the words of the statutes that it is to be ascertained what rates, tithes, and tithe rentcharge are subject to. As to the poor rate, all tithes were made rateable to the poor by 43 Eliz. c. 2, and the practice, though not uniform before the Tithe Commutation Acts, has been so since, to rate tithes to the poor. The incumbent is rateable in respect of his tithes, and in respect of a modus, composition real, or money payment in lieu of them, for these are only tithes in another shape. In Inclosure Acts, when tithes are extinguished and substituted payments made, the latter continue rateable unless expressly exempted by the statute.

Tithes and tithe rentcharge are also liable to the highway rate, and there is no distinction between the tithes of the incumbent and tithes appropriate. 13 Geo. 3, c. 78, s. 45. 5 & 6 Will. 4, c. 50, s. 27.

But tithes are not rateable to the church rate, for the parson or vicar is obliged to repair the chancel out of the tithes.

The mode of rating tithes and tithe rentcharge is the same as regards other property. The rule laid down by the Parochial Assessment Act, 6 & 7 Will. 4, c. 96, s. 1, was, that the poor rate should be made upon an estimate of the net annual value of the hereditament, that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and

tithe commutation rentcharge, if any, and deducting therefrom the probable annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent. The gross estimated rental is the ascertained rent for the current year, which varies with the price of corn. From the gross estimated rental must be deducted,—1. The tenants' rates and taxes which are imposed on the tithe, as for example, the tenants' income tax, assessed under schedule B. (but not the land-tax which is charged upon the tithe rentcharge, nor the property tax assessed under sched. A., nor the sewers rate); 2, ecclesiastical dues payable in respect of the tithes, as synodals, procurations, first fruits, and tenths, also an allowance for annual cost of repairs of chancel; 3, costs of collecting the tithes and losses by non-payment; 4, expenses (not the incumbent's personal services but those) of employing a curate in certain circumstances. The curate's salary was allowed to be deducted where from the vast size or population of the parish one man's labour was entirely insufficient for the duties necessarily to be discharged by the incumbent. *R. v. Goodchild*, E. B. & E. 1. So where the incumbent, holding two inseparable benefices of which he cannot discharge the duties, from a sense of duty, or by compulsion of a bishop, appoints a curate. *Id. Williams v. Churchwardens of Llangeinwen*, 26 J. P. 164.

Where a curate is employed by a vicar who has commutation rentcharge in more than one township, the curate's salary is to be apportioned on the whole income of the vicarage, and not on the part which issues from each township. *Overseers of Scriven v. Fawcett*, 27 J. P. 344.

But where the curate is employed because the incumbent is non-resident, or where he is sick or negligent, or disinclined to do the duty personally, then the curate's salary is not to be deducted. *R. v. Goodchild*, E. B. & E. 1. So where a district has been formed under any of the New Parishes Acts out of a parish, and the incumbent of the mother parish had voluntarily covenanted to pay a stipend to the minister of the new district, this cannot be deducted. *Lawrence v. Tolleshunt Knights*, 31 Law J. 148, M. C. So where the incumbent holds two distinct and separate benefices, and requires a curate to do the duties in one, he cannot claim the deduction. *Wheeler v. Overseers of Burnington*, 1 B. & S. 709.

*Rights and privileges of incumbents generally.*] The incumbent is entitled to the whole of the tithes, great and small, and the other ecclesiastical dues of the parish; the vicar has usually only the small tithes, and the impropriator the great tithes, but this may vary according to the nature of the endowment. The incumbent has also the freehold, for his life,

in the parsonage house and the glebe, and the freehold of the church is in him. See *ante*, p. 64. The incumbent, vicar, and curate are exempt from serving the office of overseer of the poor; and exempt from serving as jurors; 6 Geo. 4, c. 50, s. 2; exempt from toll on turnpike roads, when going to or returning from visiting any sick parishioner, or on other his parochial duty within his parish; 3 Geo. 4, c. 126, s. 32; and exempt from arrest, while performing divine service, or whilst going to perform or returning from performing it. 9 Geo. 4, c. 31, s. 23. A curate temporarily performing duty of a parish by order of the bishop is exempt from toll. *Temple v. Dickenson*, 1 E. & E. 34. The incumbent or vicar, or even a perpetual curate, has the right of presiding as chairman at all meetings of the parish vestry. 4 *Burn, Ecc. L.* 9. A clergyman is disabled from being an elector, councillor, or alderman of any borough, (5 & 6 Will. 4, c. 76, s. 23,) or from being a member of the House of Commons. 41 Geo. 3, c. 73. While holding a benefice he cannot rent a farm of more than eighty acres without the bishop's licence, nor engage in trade unless in conjunction with five persons, or unless he has acquired some trade by marriage or will. 1 & 2 Vict. c. 106, ss. 28, 29. But he may be a schoolmaster, or buy and sell in reference to his glebe. 1 & 2 Vict. c. 106, s. 30. The penalty for illegal trading is suspension and deprivation.

*Residence.*] With regard to the clergyman who is an incumbent of a benefice, his residence on the spot is considered so important and essential to the proper discharge of his duties, that this residence is made compulsory, subject to certain exemptions and qualifications. If he have two benefices, then he shall reside on one of them. If he absent himself without licence for more than three months at one time, or at different times, in any one year, he shall forfeit one-third, one-half, or three-fourths of the annual value of the benefice according as the absence is less than six, or nine, or twelve months respectively. 1 & 2 Vict. c. 106, s. 32. Such penalties may be sued for in the Bishop's Court, and enforced by monition and sequestration, and may be applied by the bishop towards the improvement of the benefice. *Id.* s. 114. Where there is no fit house of residence belonging to the benefice, the bishop will, on written application, grant his licence to the incumbent to reside in some fit and convenient house, such house to be not more than three miles if in the country, and two miles if in a city or borough, or market town. *Id.* s. 33. The exceptions from the above general rule of residence are in favour of heads of colleges, or head masters and professors, deans of cathedrals or collegiate churches, chaplains, and persons connected with universities and colleges, and engaged in duty

there. *Id.* s. 38. Besides the persons specified in the statute, the bishop has a discretion to exempt incumbents in particular circumstances, but such licence for exemptions can only be obtained on petition to the bishop, setting forth full particulars as to how the cure is to be filled during the period of non-residence and other matters. The circumstances under which the bishop is authorized to give a licence for non-residence are, —1, mental or bodily incapacity; 2, dangerous illness of the incumbent's wife or child; 3, where there is no fit residence in the place attached to the benefice; 4, where the clergyman has another fit residence of his own in the parish. *Id.* s. 43. If the bishop refuse a licence in such circumstances, the incumbent may appeal to the archbishop. In other cases not specially provided for, a special licence must be obtained from the bishop, and confirmed by the archbishop. *Id.* s. 44. The fee payable for a licence of non-residence of the bishop's secretary is 10s. besides stamp duty, and 3s. to the registrar of the diocese, and 5s. to the archbishop's secretary when he is applied to. *Id.* s. 47. A licence becomes void by the death of the bishop who granted it, or by his revocation, which revocation however will only be allowed after an opportunity given to the incumbent to show cause against it. *Id.* ss. 48, 49. Every petition for licence of non-residence must be filed in the registry of the diocese, and so must a revocation, and all persons may inspect the same on paying a fee of 3s. In all cases the incumbent shall transmit a copy of his licence of non-residence to the churchwardens of his parish, and the bishop must also transmit to them a copy of any revocation, and these are to be read at the visitations of the district. *Id.* s. 50. Every year the archbishop must transmit to Her Majesty in council, a list of the special licences of non-residence or renewal of licences, and the Queen may revoke the same. *Id.* s. 51. Also every year the bishop must transmit questions to each of his clergy as to their residence. *Id.* s. 52. Every bishop must send an annual return of these licences, and particulars as to residence of his clergy. *Id.* s. 53. Where an incumbent has offended against the statute as to residence, the bishop may issue a monition, calling on such incumbent to return to his benefice, and if after thirty days he fail to do so, or to give some sufficient answer, the bishop may sequester the profits until compliance with the monition. *Id.* s. 54. Before sequestration issues however the incumbent ought to have an opportunity to be heard; *Bonaker v. Evans*, 16 Q. B. 163; but if the answer given is insufficient, no further hearing is necessary. *Bartlett v. Kerwood*, 2 E. & B. 771. It is for the bishop to decide as to the sufficiency of any excuse for non-residence, and if he has fairly applied his mind to the subject and decided honestly, a common law court will not interfere.



*Re Bartlett*, 3 Exch. 28; 12 Q. B. 488. There is an appeal to the archbishop within one month after service of the order for sequestration. *Id.* The archbishop may remit the penalty in cases disposed of by the bishop, and Her Majesty in council may remit the penalty where the archbishop disposed of the case. 1 & 2 Vict. c. 106, s. 57. If the sequestration continue a whole year, or there be two sequestrations in two years, the benefice becomes void, and the patron may make a fresh presentation.

*Pluralities.*] No incumbent of a benefice can take and hold together with it another benefice, unless the churches are within three miles of one another by the nearest road, and the annual value of one of them does not exceed 100*l.* 13 & 14 Vict. c. 98, s. 1. Nor can two benefices be held together if the population of one exceeds 3,000, and that of the other exceeds 500. 1 & 2 Vict. c. 106, s. 4. The word benefice includes in such a case any perpetual curacy, endowed public chapel, parochial chapelry, or district chapelry. 13 & 14 Vict. c. 98, s. 3. But a dispensation or licence may be obtained from the archbishop, so as to allow two benefices to be held together, and if he refuse, an appeal lies to Her Majesty in council. 1 & 2 Vict. c. 106, s. 5.

*Exchange of benefices.*] Before an exchange of benefices can be made, a licence from the ordinary is necessary, and the consent of the patrons, and each party must first resign the benefice to the ordinary. If there is anything simoniacal in the agreement, *i. e.*, if any sum of money or valuable consideration be given, the parties shall forfeit double the value. Each is liable to the other for dilapidations. *Dormer v. Craig*, 9 M. & W. 166.

*Union of benefices.*] Statutes have passed to unite benefices in cities, towns, and boroughs, the last of which was the statute 23 & 24 Vict. c. 142, amending the Acts 1 & 2 Vict. c. 106, 13 & 14 Vict. c. 98, and 18 & 19 Vict. c. 127. In the metropolis, two or more contiguous benefices may be united, or a benefice or contiguous benefices, and one or more spiritual sinecure, rectory or rectories, vicarage or vicarages, contiguous to such benefice or benefices. 23 & 24 Vict. c. 142, s. 1. The Bishop of London and the Bishop of Winchester may, when they think a union of benefices will be advantageous, cause a commission to report on the subject, notice of which is to be sent to the vestry clerk of each parish affected. *Id.* s. 3. The bishop after the report is to submit proposals of a scheme for union to the churchwardens of each parish, that the scheme may be considered by the inha-

bitants in vestry assembled, who may signify their assent or their objections. When the vestries have agreed and the patrons, the scheme is to be prepared by the ecclesiastical commissioners, giving the pariah opportunity of being heard. *Id.* ss. 7, 8, 9. Part of a benefice may be united as well as a whole benefice. *Id.* s. 10. The surplus revenue of the united benefice may be annexed as an endowment to any other benefice in the metropolis or its vicinity. *Id.* s. 11. And the patronage of one benefice may be exchanged with that of any other corporation or person. The scheme for union of benefices may include the erection of a new church or parsonage house, and for the appropriation and sale of the materials and site of a church, &c. But any scheme must be laid before parliament before it is submitted to the Queen in council. The site of a church pulled down cannot be let or appropriated without the consent of the bishop, and archbishop, and home secretary. Notwithstanding the union of such benefices, the parishes shall remain distinct for all civil purposes, and shall choose churchwardens as before. The bishop shall alter and re-adjust the seats in the united church. Similar powers are given as to other benefices in cities and large towns. On a representation of the inhabitants of any two or more parishes, the bishop may institute an inquiry; the church-building commissioners may prepare a scheme. 18 & 19 Vict. c. 127. Nothing is to legalize the sale or letting of any burial ground or churchyard, or site of a church, and tablets and monuments in the church to be pulled down, if not removed by the legal representatives to the other church, shall be so by the parties removing the church and fixed in the other church. *Id.* ss. 8, 9. When a church is pulled down, the church-building commissioners may alter and re-adjust the pews.

*Sequestration of benefice.*] When the incumbent of a benefice has become a debtor and a judgment obtained, and a writ of *fi. facias* has issued against him, the sheriff cannot deal with him as he deals with other persons in whom personal or real property is vested; but the proceeding is left in the hands of the bishop, who acts the part of the sheriff in that respect. On receiving the writ of *fi. fa.*, the bishop, or rather the registrar of the diocese, issues a writ of sequestration, which is, in fact, an authority to the person named in it, and who for convenience is generally the creditor of the incumbent, to seize and collect the tithes, fruits, profits, and emoluments of the rector or vicar. Or the writ of *sequestiari facias* may be issued at once by the creditor, commanding the bishop to levy the debt out of the rents and profits of the rectory. The above sequestration is at the suit of a creditor.

Sequestration is, however, also the process by which the bishop enforces decrees or appearance in his own right. The sequestration is published by affixing a copy to the church door. The sequestrator then enters into possession, and draws all the profits, out of which however he must first pay for the proper service of the church, for which purpose an agreement must be made with the bishop as to the proper person to perform the service and what salary he is to receive.

The sequestrator while in possession collects all the rents and profits, and can sue in his own name, and recover tithes, rentcharges, fees or any other payments in respect of the benefice. 12 & 13 Vict. c. 67. When the debt has been satisfied, then the sequestrator must deliver up his charge, and give an account of the monies he has received to the bishop. When the incumbent becomes a bankrupt, his assignees are entitled to sequestration of the benefice in like manner. 24 & 25 Vict. c. 184, s. 136. When a sequestrator is in possession he is not entitled to give audit dinners, and incur other expenses not strictly legal. *Sanders v. Penlease*, 23 J. P. 744.

*Resignation.*] An incumbent may voluntarily resign his benefice, which he does by giving it up to the ordinary. The benefice is not vacant, however, until the resignation is accepted. It is said that it is discretionary in the bishop to accept the resignation, and that there is no mode of compelling him to accept. *Heath v. Gray*, Amb. 268. But he is bound to accept in case a special bond of resignation has been given, i. e., a covenant to resign at a particular time in favour of a particular individual named. 9 Geo. 4, c. 94. The only persons in whose favour such bonds of resignation are legal are an uncle, son, grandson, brother, nephew, or grand nephew of the patron, or of one of the patrons. The instrument is to be deposited in the registry of the diocese, and may be inspected on payment of 1s. *Id.* s. 3. No person but a private patron is entitled to take such bond of resignation; that is, bishops, archbishops, charitable trustees, or the crown cannot legally accept such bonds. *Id.* s. 6.

*Suspension, deposition, deprivation, and degradation.*] When a clergyman has committed an ecclesiastical offence, the punishment is either suspension, deposition, deprivation, or degradation, the precise meaning of which words, however, is not clearly ascertained. Deprivation is the sentence for simony, refusing to use the authorized books in the church service, or to read the morning and evening prayer, or accepting a benefice in contravention of the Pluralities Act. Suspension is a milder punishment, which the bishop is at liberty to

substitute for deprivation ; and is often resorted to. Degradation is the appropriate punishment where the clerk has no benefice.

*Curates.*] The word curate originally meant any minister who has the cure of souls, but in practice he is now known as one who has no such cure, but merely assists an incumbent in the spiritual duties incident to such cure. He is usually called a stipendiary curate (as contradistinguished from a perpetual curate), because he receives a fixed salary or stipend from the incumbent. A curate must be a priest, and must be licensed by the bishop of the diocese, and he must have previously subscribed the thirty-nine articles, taken the oaths, and complied with the other requisites of the church. The law affecting stipendiary curates is chiefly contained in the statute 1 & 2 Vict. ch. 106.

In some cases the bishop himself may appoint a curate, as where the incumbent does not reside in the parish, or the previous curate has died or removed, or where the duties of the cure are inadequately performed. In large benefices the bishop may also require the incumbent to appoint a curate, as where the value of the benefice exceeds 500*l.* and the population amounts to 3,000, or where though the population is under 3,000 there is a second church not less than two miles from the mother church, and with a hamlet or district of 400 population. In case of non-resident incumbents the bishop is to appoint a stipend not less than 80*l.*, and varying in excess of that amount according to the value of the benefice and the amount of population. *Id.* s. 85. In some cases the bishop may authorize a less stipend according to peculiar circumstances. *Id.* ss. 87, 88, 89. Where the incumbent is non-resident the curate is to reside in the parsonage house. A curate is not allowed to quit his curacy except on giving three months' notice to the incumbent and the bishop. *Id.* s. 98. Where there is a vacancy in the benefice, he is bound to take six weeks' notice to quit from the new incumbent. *Id.* ss. 95, 96. The bishop may at all times at discretion remove a curate after giving an opportunity to the curate to be heard against such a step, and subject to an appeal to the archbishop. *Id.* s. 98. The bishop may also revoke the licence of a curate, and such revocation must be registered in the registry of the diocese.

A licensed curate has the right, during the suspension of the vicar, to appoint the parish clerk, if such office becomes vacant. *Pinder v. Burr*, 4 E. & B. 105.

*Duty as to public worship.*] It is the duty of the clergyman

to adhere strictly to the prescribed form of worship, for the Book of Common Prayer is made part of the statute law of England. 18 & 14 Ch. 2, c. 4; 2 Edw. 6, c. 1; 5 Edw. 6, c. 1; 1 Eliz. c. 2. Heavy penalties are incurred by refusal to follow the order and forms of the Book of Common Prayer, or if he preaches in derogation thereof, he shall forfeit the profit of such one of his spiritual benefices as the crown may appoint, and shall be imprisoned for six months, with higher penalties for repetition of the offence. See 2 & 3 Edw. 6, c. 1, s. 1; 1 Eliz. c. 2; 5 & 6 Edw. 6, c. 1. The appropriate remedy is under the Church Discipline Act. 3 & 4 Vict. c. 86. The bishop may appoint three services to be performed in any church within his diocese. 58 Geo. 3, c. 45, s. 65. And if necessary he may require the incumbent to appoint a curate for that purpose, or in default appoint one himself, and direct the churchwardens to let such of the pews as are not held by faculty or prescription, and so raise money towards payment of such curate, unless the parishioners are willing to raise the salary by subscription; the salary of the curate not to exceed 80*l.* where the congregation do not so subscribe. *Id.* The bishop may also enforce two full services on every Sunday, each service including a sermon or lecture. 1 & 2 Vict. c. 106. The minister and churchwardens are bound to refuse to allow any person to preach in the church who does not show his licence to preach. Canon 36. And it is the duty of the churchwardens to keep in a book a list of all strangers who preach. Canon 52. The licence, however, need not be a licence by the bishop of the diocese. *Brown v. Spence*, 1 Keb. 508. The bishop has an absolute power to prevent any ordained clergyman from publicly officiating in his diocese unless duly authorized by himself or his predecessors. But bishops and clergy of the episcopal church of Scotland and the United States of America, on producing their qualification may be allowed to preach with the consent of the bishop here and of the incumbent. 3 & 4 Vict. c. 83. The church in the colonies of Great Britain is in that respect treated in the same footing as our own. *Id.* The dress of the clergyman in officiating in public worship is prescribed by the canon law. It is a surplice with sleeves, while the clergyman says the public prayers or ministers the sacraments or rites, to which is added a decent tippet of black, or, if the minister is a graduate, then a hood may be worn in uniformity with his degree. Canon 58. On other occasions the wearing of a surplice is optional, except that on the administration of the holy communion, a plain white alb with a vestment or cape is prescribed. It seems the minister has an absolute discretion as to directing parts of the service to be said or sung, and as to the appointment of singers or instrumental performers. Severe penalties are im-

posed on all who disturb the minister during public worship. 2 & 3 Edw. 6, c. 1; 1 Wm. & M. st. 2, c. 3; 1 Eliz. c. 1; 1 Wm. & M. c. 18. See *ante*, p. 49.

*Duty as to baptism.*] In every church a font for baptism must be set up. Baptisms are directed to be administered on Sundays and other holidays in a public manner after the last lesson, and though in cases of weak health it may be administered in private houses, the regular and orderly place is the church, and private baptisms are to be discouraged. Canon 81. (Rubric to baptismal service.) For every male child there are to be two godfathers and one godmother, and for every female child, one godfather and two godmothers, who must have received the holy communion. *Id.* Canon 29. The father is not allowed to be a godfather. *Id.* The minister is not to permit wanton names to be given to children. The service in the rubric is to be strictly followed. In cases of illness or necessity the minister commits an ecclesiastical offence if he negligently or wilfully refuse to baptize at home. Canon 69. Though baptism should be administered by a clergyman of the church, yet if administered by a layman or dissenter it is effectual; *Kemp v. Wiche*, 3 Phill. 266; and originally baptism was generally administered by laymen. *Escott v. Meulin*, 4 Moore, P. C. 104. At common law no fee is exigible for baptism, but in some cases by custom a fee is due if the baptism takes place in the party's own parish. *Prideaux v. Lancaster*, 12 Mod. 171. The minister who baptizes is bound to register the same in the book he keeps for that purpose; 52 Geo. 3, c. 146; 6 & 7 Will. 4, c. 86, s. 5; and he is bound to give a certificate of baptism if required on payment of a fee of 1s., and to permit searches to be made for fees specified. 6 & 7 Will. 4, c. 86, ss. 24, 357.

*Duty as to the Lord's supper.*] It is one of the duties of the minister of the church to administer the sacred rite of the Lord's supper in the church at intervals, not less than three times each year, one of which is Easter, due notice being given of the same. (Rubric in communion service.) By the canon law the minister is enjoined not to admit any one to this rite who is a notorious evil liver, drunkard, swearer, &c. Canons 23, 26, 27, 109. It has been doubted whether the minister's discretion in all cases is absolute to admit or refuse the rite to any person; and though an action was once brought against a clergyman for refusing to administer the Lord's supper to an individual, the question was not decided, owing to technical reasons. *Clovell v. Cardinal*, 1 Sid. 34. It is the duty of the church-

wardens to provide the necessary materials for the decent celebration of the Lord's supper. See *ante*, p. 46. The communion is not to be administered in private houses except to the sick and in cases of necessity. Canon 71. During the reading of the offertory the rubric enjoins the collection of alms for the poor, which are to be disposed of by the minister and churchwardens for the benefit of the poor; and in proprietary chapels these do not belong to the proprietors, but to the mother church, for the like purpose. *Hillcoat v. Moysey*, 2 Hagg. 174.

*Duty as to burial.*] Though at common law every parishioner is entitled to be buried in the churchyard of the parish, yet there is no right to be buried in any particular part of the churchyard. *Ex parte Blackmore*, 1 B. & Ad. 122. But by custom there may be a prescriptive right to a particular vault in the church in respect of an ancient messuage. The parishioners have however no right at common law to be buried in the parish church, but persons may have such right by virtue of a faculty or prescription. The incumbent alone has the absolute discretion to allow or refuse the liberty of burial in the church, and neither the churchwardens nor ordinary can grant the licence. *Bryan v. Whistler*, 8 B. & C. 295. An incumbent, however, cannot bind his successor by any such consent. It seems also that even where there is a faculty duly obtained, the minister has a right to object to such burial, but his reasons must be reasonable and capable of being reviewed by the ecclesiastical court. *Rich v. Bushnell*, 4 Hagg. 154.

Every parishioner has a right to be buried in the churchyard of his parish, and without payment of any fee for breaking the soil, (1 *Burn, Ecc. L.* 258,) unless such fee be due by prescription or immemorial custom. *Andrews v. Cawthorne*, Willes, 536; and see *Spry v. Gallop*, 16 Mees. & W. 716. But it seems that there is no such right in respect to the burial of a person who was not a parishioner, without the consent of the parishioners or churchwardens, and perhaps of the incumbent whose soil is broken. 1 *Burn, Ecc. L.* 258. And no minister shall refuse or delay to bury any corpse that is brought to the church or churchyard (convenient warning being given him thereof before), in such manner and form as is prescribed in the book of common prayer; and if he refuse so to do (except the party deceased were denounced excommunicated *ex majori excommunicatione* for some grievous and notorious crime, and no man able to testify of his repentance),—he shall be suspended by the bishop of the diocese from his ministry for the space of three months. Canon

68. Also persons who die unbaptized, or who have laid violent hands upon themselves, are not to have the burial service performed over them. *Rubr.* But baptism by a dissenting minister, (*Kemp v. Wickes*, 1 Burn, Ecc. L. 265, n.) or private baptism, is deemed sufficient; and unless the deceased has been found *felo-de-se* by a coroner's inquest, he is not within the other branch of this exception. 1 Burn, Ecc. L. 266. But even persons who are found *felo-de-se* by coroner's inquest, instead of being buried in the public highway, as formerly, are now to be buried in the churchyard or other burial ground of the parish or place in which by law or custom they might be interred; 4 Geo. 4, c. 52, s. 1; but the burial service is not to be read over them. *Id.* s. 2.

As to the burial of the bodies of paupers,—it is provided by the 7 & 8 Vict. c. 101, s. 31, that unless the guardians in compliance with the desire expressed by the pauper in his lifetime, or by any of his relations, or for any other cause, direct the body to be buried in the churchyard or burial ground of the parish to which the pauper was chargeable (which they are authorized by this Act to do), every dead body which the guardians, or any of their officers duly authorized, shall direct to be buried at the expense of the poor rates shall (unless the deceased person, or the husband or wife, or next of kin, have otherwise desired) be buried in the churchyard, or other consecrated burial ground, in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred. And where the churchyard of the parish is closed, then the guardians or overseers are to bury in the ground substituted for it. 18 & 19 Vict. c. 79.

For the purpose of burial, the workhouse of the union and district school are constructively situated in the parish to which the poor person was chargeable. 7 & 8 Vict. c. 101, s. 56.

In all cases of burial under the direction of the guardians or overseers, the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of any Act of Parliament, shall be paid out of the poor rates for the burial of each such body to the person or persons who, by such custom or under such Act, may be entitled to receive any fee. *Id.* s. 31.

As to contribution from union funds for the enlargement of any churchyard or consecrated burial ground, or towards the obtaining of any such consecrated public burial ground, and the right of the guardians to bury the bodies of paupers therein, see 13 & 14 Vict. c. 101, s. 2.

The common law doctrines as to the right of burial have been considerably modified by the passing of a series of Acts called the Burial Acts: 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 18 & 19 Vict. c. 128; 20 & 21 Vict. c. 81; 23 & 24



Vict. c. 64. On a representation of the secretary of state, a burial ground may be closed by an order in council, after which date no burial is permitted. An exception however is allowed in favour of an ancient right to bury under a church or in vaults, if it is not prejudicial to health. The vestry, at a meeting called for the purpose, may resolve to purchase a new burial ground in lieu of the old. The new churchyard is to be kept in repair by the burial board. The burial board is appointed by the vestry after a resolution has been come to to acquire a new burial ground, and the board shall consist of not less than three nor more than four ratepayers of the parish, of whom one-third shall go out of office every year. The incumbent may be one of the board. Town councils in boroughs may be burial boards. Incumbents who would have been entitled to fees in the old burial ground are entitled to perform similar duties, and receive the same fees in the new ground; and so as to the clerk and sexton.

*Duty as to Marriage.**Duty generally*, 101.*Publication of banns*, 101.*In lieu of banns*, 102.*Marriage of minors*, 102.*Penalties for unduly solemnizing marriage*, 103.*Marrying a person divorced for adultery*, 103.*Refusing to marry*, 104.*Marriage fees*, 104.

*Duty of clergyman as to marriage generally.*] One of the duties of the clergyman of the parish is to celebrate the rite of marriage between the parishioners. Before Lord Hardwicke's Act, 26 Geo. 2, c. 33, it was not necessary to have the assistance of a priest of the Established Church to perform that office; but after that Act was passed, it was made a general rule that no marriage should be valid unless it was celebrated by an ordained priest in the church, and in presence of witnesses. *R. v. Millis*, 10 Cl. & F. 534. The presence of a clergyman was essential, and on a late occasion it was decided that a marriage celebrated by a priest in Ireland between himself and a female, without the assistance of another clergyman, was invalid. *Beamish v. Beamish*, 9 H. L. Cas. 274. The Act of 26 Geo. 2, was amended by the statutes 4 Geo. 4, c. 76, 6 Geo. 4, c. 72; and 6 & 7 Will. 4, c. 85, and other statutes. By the statutes the clergyman's authority for the celebration of marriages between two parties is the previous publication of banns, or a registrar's certificate, or the licence of the ordinary, which dispenses with such publication

*Publication of banns.*] The publication of banns is to be made in an audible manner three successive Sundays in the parish church, or in some public chapel in which banns may be lawfully published, such church being the church of the parish in which the parties or one of them dwells. The publication is to be during the time of morning or evening service, immediately after the second lesson. Marriages may be legally solemnized in all churches and chapels erected since 26 Geo. 2, and duly consecrated, in which it has been usual since that Act to solemnize marriages. Moreover, by 4 Geo. 4, c. 76, s. 3, the bishop, with the consent of the patron and incumbent, might authorize the publication of banns, and the solemnization of marriages in any public chapel, with or without chapelries annexed. 4 Geo. 4, c. 76, s. 3; 6 & 7 Will. 4, c. 85, s. 26. Marriages may be celebrated in district parish churches and chapels of ecclesiastical districts under the Church Building Acts. In parishes where there is no parish church, or none having divine

service at the time, and in extra-parochial places, the banns may be published in the adjoining parish church.

No parson, minister, or curate, shall be obliged to publish the banns of matrimony between any persons whatsoever, unless the persons to be married shall, seven days at least before the time required for the first publication of such banns, respectively deliver, or cause to be delivered to such parson, vicar, minister or curate, a notice in writing, dated on the day on which the same shall be so delivered, of their true christian names and surnames, and of the house or houses of their respective abodes within the parish or chapelry, and of the time during which they have dwelt, inhabited, or lodged in such house or houses respectively. 4 Geo. 4, c. 76, s. 7. If the marriage do not take place within three months after the banns, republication is necessary. *Id.* s. 9. A register book of banns is to be kept by the churchwardens. *Id.* s. 6. If the parties or one of them has caused the banns to be published in a totally false name, the marriage will be void, though if the name only varies in a partial manner, which is accounted for, the marriage will not be void. And if the parties wilfully intermarry in a church without due publication of banns or licence, the marriage is void. 4 Geo. 4, c. 76, s. 22.

*In lieu of publication of banns.*] By the stat. 6 & 7 Will. 4, c. 85, s. 1, and 1 Vict. c. 22, s. 36, all parsons, vicars, ministers or curates, are to solemnize marriages, on receiving a registrar's certificate of the district in which the church is, which certificate is to be in lieu of publication of banns. So a licence from the ordinary dispenses with the publication of banns, and is a sufficient authority to the parson. No licence is granted by the archbishop or bishop, or ordinary, to solemnize marriage in any other than the parish church or chapel of the place where the parties dwell, or one of them dwells. 4 Geo. 4, c. 76, s. 10. In order to obtain the licence, one of the parties must personally swear that there is no impediment or other lawful cause to hinder the marriage, and that the party has lived for fifteen days preceding within the parish. A special licence of the archbishop is the only authority for solemnizing the marriage in a place other than a church or chapel.

*Marriage of minors.*] No minister, vicar, or curate, solemnizing marriages between persons both or one of whom shall be under the age of twenty-one years, after banns published, shall be punishable by ecclesiastical censures for solemnizing such marriages without consent of parents or guardians, unless such parson, &c., shall have notice of the dissent of parents or guardians, or the parents or guardians openly declare their dissent at the time of publication. The want of consent of the

guardian or parent does not annul a marriage between infants or minors, though in cases where the adult party has fraudulently stated that consent was given, the property of the infant will be settled to the exclusion of such party offending, on the application of the attorney-general. 26 Geo. 2, c. 33, s. 28. And it is the same where a registrar's certificate was obtained by false representations. 6 & 7 Will. 4, c. 85, s. 43; 19 & 20 Vict. c. 119, s. 19.

*Penalties for unduly solemnizing marriage.*] Every parson, vicar, or curate, who marries any persons without licence, or due publication of banns, or registrar's certificate, or suffers any other minister to do so in the church or chapel of such parson, forfeits 100*l.*; 7 & 8 Will. 3, c. 36, ss. 2, 3; and the man married, and the sexton or clerk officiating, also incur a penalty. *Id.* s. 4. Any person solemnizing matrimony in any other place than a church or such public chapel wherein banns may be lawfully published, or at any other time than between 8 A. M. and 12 noon, unless by special licence of the Archbishop of Canterbury, or without due publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same, or if any person falsely pretending to be in holy orders, solemnize matrimony according to the rites of the Church of England, every person knowingly and wilfully so offending, and being lawfully convicted thereof, is guilty of felony, and may be transported for fourteen years. 4 Geo. 4, c. 76, s. 21. Every person knowingly and wilfully making a false declaration, or signing a false notice or certificate for the purpose of procuring a marriage, or who forbids the issue of a certificate by falsely representing himself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall suffer the penalties of perjury. 6 & 7 Will. 4, c. 85, s. 38; 19 & 20 Vict. c. 119, s. 18. It is felony to wilfully solemnize any marriage in England, except by special licence, in any other place than a church or chapel in which marriages may be solemnized according to the rites of the church of England,—6 & 7 Will. 4, c. 85, s. 39,—and so as to the forgery of entries in marriage registers.

*Marrying a person who has been divorced for adultery.*] No clergyman in holy orders of the united Church of England and Ireland, shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of any such person. 20 & 21 Vict. c. 85, s. 57.

Provided always, that when any minister of any church or chapel of the united Church of England and Ireland shall refuse to perform such marriage service between any persons, who but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in holy orders of the said united church entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage service in such church or chapel. *Id.* s. 58.

*Refusing to marry.*] It seems that a clergyman is liable to an action at law for refusing to marry two persons who have complied with the preliminary requisites, but it must appear that they both requested such clergyman to marry them, and were willing to be married. *Davis v. Black*, 1 Q. B. 900. A clergyman has no right to impose a condition on the parties that they should be first confirmed, though the mere indication of his opinion to that effect will not subject him to an indictment, provided the parties did not tender themselves to be married and expressly requested him to marry them. *R. v. James*, 2 Den. C. C. 1.

*Marriage fees.*] At common law the clergyman is not entitled to demand any fee for performing the ceremony; though the claim may be supported after the marriage is celebrated, if there has been an ancient custom to pay it. A custom to claim a fee from parishioners on marriage, whether married in the parish church or not, is not one which can be supported as reasonable. *Thompson v. Davenport*, Lutw. 1059.

#### *Prison Ministers.*

With regard to all gaols, prisons, and houses of correction maintained at the expense of the county, the duty of ministers is prescribed by the Prison Ministers Act, 1863. 26 & 27 Vict. c. 79.

Where the number of prisoners confined in any prison to which this Act applies, and belonging to some church or religious persuasion differing, if in England, from the Church of England, and if in Scotland, from the Church of Scotland, is so great as, in the opinion of the justices, county board, or other persons having the appointment of chaplain in the said prison, to require the ministrations of a minister of their own church or persuasion, the said justices, county board, or other persons may appoint a minister of such last-mentioned church or persuasion to attend at the said prison on the prisoners of

his own church or persuasion, and they may, if they think fit, award to him a reasonable sum as a recompense for his services, such sum to be deemed a part of the expenses of the prison to which he is appointed, and to be paid out of the funds legally applicable to the payment of such expenses.

The visiting justices of any prison may, if they think fit, without a special request being made by, but not against the will of, any prisoner of a church or religious persuasion differing from that of the Established Church, permit a minister of the church or persuasion to which such prisoner belongs (if no appointment of such a minister has been made under this Act) to visit such prisoner at proper and reasonable times, under such restrictions imposed by them as may guard against the introduction of improper persons, and may prevent improper communications; provided that any prisoner shall, on request, be allowed, subject to the rules of the gaol, to attend the chapel or to be visited by the chaplain of the gaol. Every minister appointed or permitted to visit prisoners under this Act shall hold his appointment or permission to visit during the pleasure of the authority by whom he was appointed or permitted to visit, and shall conform in all respects to the regulations of the prison at which he attends. No minister shall be appointed under this Act for any prison in which there is not a chaplain of the Established Church. *Id.* s. 8.

## COLLECTOR OF HIGHWAY RATE.

*How appointed*, 106.*Security*, 106.*Their duties*, 106.

*How appointed.*] The surveyor of any parish [township, &c.] by consent of the majority of the inhabitants in vestry, may appoint any number of collectors of the highway rate; and may remove any such collector and appoint another in his stead, and make such allowance to such collector out of the highway rates, as the inhabitants in vestry shall think reasonable. 5 & 6 Will. 4, c. 50, s. 36.

*Security.*] The surveyor is required to take security from every collector so appointed, for the due execution of his office of collector, to the full amount of the sum likely to be in the hands of the collector at any one time, and the security shall be by bond without stamp. *Id.* s. 37.

*Their duties.*] It is their duty to collect, receive, and enforce payment of the highway rate. And they shall have the same powers, remedies, and privileges for levying and enforcing the payment of such rate, as the surveyor appointed under the Highway Act (5 & 6 Will. 4, c. 50, s. 36); that is to say, the same powers, remedies, and privileges as the overseers of the poor in the parish have by law for the recovery of any rate made for the relief of the poor. *Id.* s. 34. See *Morrell v. Martin*, 11 Law J. 22, n. *Charinton v. Johnson*, 14 Law J. 299, m. As to the mode of proceeding for the non-payment of highway rate, see stat. 12 & 13 Vict. c. 14. And see 1 *Arch. J. P.* 774; 3 *Arch. J. P.* 268, 8th Ed.

They must also account for the money received by them. By stat. 5 & 6 Will. 4, c. 50, s. 38, every such collector appointed by virtue of this Act, shall, under his hand, and at such time and in such manner as the surveyor may direct, deliver to the said surveyor as aforesaid true and perfect accounts in writing of all monies which shall have been by such collector received by virtue of this Act, and also a list of the names of all such persons as shall have neglected or refused to pay their respective rates, and of the monies due from them respectively; and every such collector shall pay all such monies as shall remain due from him to the said surveyor as

aforesaid;—and if any such collector shall refuse or neglect to make and render such account, or to produce and deliver up the list of persons neglecting and refusing to pay their rates as aforesaid, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said surveyor as aforesaid, or to such person as he shall appoint to receive the same, within three days after being thereunto required by the said surveyor as aforesaid, by notice in writing under his hand given to or left at the usual place of abode of such collector, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said surveyor as aforesaid respecting the same, then and in every such case, upon complaint made by the said surveyor as aforesaid of any such refusal or wilful neglect as aforesaid to any justice of the peace, such justice may and he is hereby authorized and required to issue a summons under his hand for the collector so refusing or neglecting, to appear before any two justices of the peace; and upon the said collector appearing, or having been so summoned and not appearing, without some sufficient or reasonable excuse, or not being found, it shall be lawful for the said two justices to hear and determine the matter;—and if upon confession of the party, or by the testimony of any credible witness on oath, it shall appear to such justices that any monies remain due from such collector, such justices may and they are hereby authorized and required, upon non-payment thereof, by warrant under their hands, to cause such money to be levied by distress and sale of the goods and chattels of such collector; and if no goods and chattels of such collector shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, then and in every such case such justices shall and they are hereby required to commit such offender to the common gaol or house of correction for the county, city, or place where such offender shall be or reside, there to be kept to hard labour for a period not exceeding six calendar months, or until he shall have paid such monies as aforesaid or compounded with the surveyor as aforesaid for such money (which composition the said surveyor, with the consent of the inhabitants in vestry, or, in any parish where they do not meet in vestry, with the consent of the inhabitants contributing to the highway rate, at a public meeting assembled, is hereby empowered to make and receive);—or if it shall appear to such justices that such collector had refused or wilfully neglected to render and give such accounts, or to produce and deliver the list of persons neglecting and refusing to pay their rates as aforesaid, or that any books, papers, or writings relating to the execution of this Act remained in



the hands or in the custody or power of such collector, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such collector shall, on conviction thereof, forfeit for such offence any sum not exceeding 20*l.*, and in default of payment thereof shall be committed to the common gaol or house of correction for the county, city, or place where such offender shall be or reside, there to be kept to hard labour for a period not exceeding four calendar months, or until he shall have given a true and perfect account as aforesaid, and delivered such list as aforesaid, and delivered up such books, papers, and writings, or give satisfaction in respect thereof to the said surveyor :—Provided always, that no conviction or imprisonment of such collector as aforesaid shall exonerate or discharge any security taken from him on his appointment as aforesaid. 5 & 6 Will. 4, c. 50, s. 38.

Where the parish is included in a highway district the collector will be in the same relative position to the waywarden of the parish as he is in other cases to the surveyor. 25 & 26 Vict. c. 61.

## COLLECTOR OF POOR RATE.

1. *In parishes not in Union.*

In parishes not in union it is the duty of the overseers to collect the poor rate; they cannot employ a collector for the purpose, and pay him out of the parish funds. *E. v. Gwyer and Manley*, 4 Nev. & M. 158. But the inhabitants of any parish, in vestry assembled [or of any township, village, or place, having separate overseers of the poor, and maintaining their poor separately, in a meeting of the inhabitants thereof, holden after due and legal notice, s. 35], may nominate and elect an assistant overseer; 59 Geo. 3, c. 12, s. 7; and among the duties assigned to him, upon his appointment, may be and usually is, the duty of collecting the poor rate; and the vestry may require him to give security for the faithful execution of the office. See *post*, tit. "*Overseer, Assistant.*"

2. *In parishes in Union.*

*His appointment*, 109.

*Queries to be answered before appointment by guardians*, 111.

*His qualification*, 112.

*His duties*, 112.

*His accounts*, 113.

*His Salary*, 116.

*Security*, 117.

*Continuance in office, &c.*, 117.

*His appointment.*] In parishes in unions, also, the vestry, in appointing an assistant overseer, may assign to him the collecting of the poor rate, if the poor law commissioners do not interfere, and order the guardians of the union to appoint a separate officer for that purpose. By stat. 2 & 3 Vict. c. 84, s. 2, the commissioners have authority to make such orders;—they have the same powers and authorities with respect to all such orders, and to the persons appointed in pursuance thereof, as they have with respect to orders made and issued, and the paid officers appointed, under the provisions of stat. 4 & 5 Will. 4, c. 76; and every person appointed by guardians of the poor under any such order of the said commissioners, shall have the like powers, authority, privileges, immunities, protections, and remedies, in and for the performance of his duty under such order, as are by law given to overseers of the poor in performance of the like duty. 2 & 3 Vict. c. 84, s. 2. See *post*, tit. "*Paid Officer.*"

And if the board of guardians of any parish or union make application to the said commissioners, to direct the appointment of a paid collector of the poor rates in such parish or union, or in any parish or parishes of such union, it shall be lawful for the said commissioners, by order under their hands and seal, to direct the said board of guardians to appoint such a collector; and the said commissioners shall have the same powers with respect to such collectors as are given to them by stat. 4 & 5 Will. 4, c. 76, with respect to paid officers; and all powers of the inhabitants of any parish in vestry assembled, or of justices of the peace, or of any persons, other than the board of guardians of such parish or union, to appoint any collector for any such parish as aforesaid, and (except when otherwise directed by the said commissioners) all appointments under such powers shall cease. 7 & 8 Vict. c. 101, s. 62. See *L. v. Greene et al.*, 21 Law J. 137, m. But by sect. 61, reciting that it was expedient that such collectors should in certain cases be invested with other of the duties of overseers of the poor, it was enacted that the inhabitants in vestry assembled of any parish situated within the district for which any collector or assistant overseer appointed under any order of the said commissioners now acts, may appoint such collector or assistant overseer to discharge all the duties of an overseer of the poor, in addition to those of collector of poor rates for such parish, and in the same manner as if he were appointed thereto as an assistant overseer under the provisions of stat. 50 Geo. 3, c. 12; and wherever any such collector or assistant overseer has been or may be appointed under any order of the said commissioners, and whilst the said order remains in force, the powers of any vestry or parish officers, or of any other persons, other than the board of guardians of such parish or union (if a board of guardians have been constituted), to appoint any collector or assistant overseer, and (if so directed by the said commissioners) every appointment under such powers shall cease: provided always, that where the appointment of such assistant overseer shall have been made under the powers of any local Act of Parliament of a parish containing more than 20,000 persons, such appointment shall continue, and the powers of such local Act, as to any future appointment of an assistant overseer, shall be exercised, but subject always to the powers of the poor law commissioners, notwithstanding the provisions of this Act: provided always, that no overseer shall be discharged by the appointment of any such collector or assistant overseer from his responsibility for the provision and supply of monies necessary for the relief of the poor, or for any of the purposes to which the rates made for the relief of the poor may be by law applicable; and every collector appointed or to be hereafter

appointed as aforesaid, and every assistant overseer appointed or hereafter to be appointed, in pursuance of stat. 59 Geo. 3, c. 12, or of the orders of the said commissioners, shall, subject to the rules of the poor law commissioners, obey in all matters relating to the duties of overseer, all directions of the majority of the overseers of the parish for which he acts; and the said commissioners shall have the same powers with respect to all collectors or assistant overseers as are given to them by stat. 4 & 5 Will. 4, c. 76, with respect to paid officers; and every collector or assistant overseer appointed as aforesaid shall be bound to give to the board of guardians of the parish or union, or if there be no such board of guardians then to the overseers of the parish for which such collector or assistant overseer may act, sufficient security for the due performance of his duties; and no bond or any other security entered into in pursuance of this Act or of the said Act of the fifty-ninth year of the reign of King George the Third, shall be charged or chargeable with, or be deemed to be or to have been subject or liable to, any stamp duty whatsoever; and wherever any parish for which such collector or assistant overseer may be appointed is situated in an union, or is governed by a board of guardians, every bond or security given by any officer, in pursuance of this Act, or of the said statute, 53 Geo. 3, c. 12, or 4 & 5 Will. 4, c. 76, and not contrary to the rules of the said commissioners, shall, if the guardians shall see fit, be put in suit by the board of guardians of the union in which the parish or district for which the officer acts or has acted may be situated, notwithstanding that such bond or security may have been originally given to the overseers of a parish, or to any other persons; and every bond or security given by or on account of any officer appointed by any board of guardians, for the due performance of the office to which he is so appointed, shall remain in full force and effect, notwithstanding any change in district for which such officer may have been appointed or required to act at the time when such bond or security was given, or the addition of any parish to, or the separation of any parish from, such union since the giving of such security. 7 & 8 Vict. c. 101, s. 61.

*Queries to be answered before appointment by guardians.]*

Before the appointment of a collector of poor rates is sanctioned by the poor law board, satisfactory answers must be given by the persons appointed to the following queries:—

1. State the christian name and surname of the person appointed as collector, in full.—2. His present place of residence.—3. His age.—4. The name of the parish or parishes for which he is appointed collector.—5. His previous occupation, professions, or callings; state whether he has been

in the army, navy, excise, police, or other public service, and if so, which service; the cause of his leaving the same; and the date when he left.—6. State whether he has before held any office in any union or parish; and, if so, what office, and in what union or parish; the cause of his leaving the same; and the date when he left.—7. State whether he continues in any other occupation, profession, or calling; or continues to hold any other paid or parochial office; and, if so, state what.—8. State whether he has ever been bankrupt or insolvent; and, if so, when; if bankrupt, whether he has obtained his certificate.—9. Whether he has a competent knowledge of accounts.—10. The amount of salary, or the nature and amount of remuneration proposed.—11. The nature and amount of security; also the names and addresses of the sureties.—12. State whether the guardians are satisfied that the person appointed is competent to fulfil the office of collector, and to perform efficiently the duties required of him.—13. State the cause of the vacancy on account of which the appointment is made; if a resignation, state the cause of such resignation, and the name of the former collector.—14. State the authority which the appointment is made under; also the date when the appointment was made; and the date from which the officer's duties commence.

— *Signature of the clerk.*

— *Signature of the officer appointed.*

[The christian name and surname being written in full.]

Reported to the poor law board for their approval, — day of —, 186—.

*His qualification.*] The order of the poor law board usually issued upon such occasions, directs that no person shall be qualified to be a collector unless upon his appointment he undertake to give one month's notice previous to resigning the office, or to forfeit one month's amount of salary, to be deducted as liquidated damages from the amount of salary due at the time of such resignation.

*His duties.*] By the same order the duties of such collector are :—

1. To assist the churchwardens and overseers in making, assessing, and levying the poor rates of the said parish.
2. To collect the poor rates from the parties assessed thereto in the said parish.
3. To assist the said churchwardens and overseers in filling

up receipts, keeping all books, and making all returns which relate to any matter concerning the poor rates of the said parish.

4. At all times, when required by such churchwardens and overseers, to produce to them the rate books and other account books in his custody relating to the said parish, and to balance the said rates, and to furnish the said churchwardens and overseers of the poor with a true list of all defaulters in the payment of poor rates due to such parish, and under their direction to institute and attend to proceedings against such defaulters.
5. To attend the meetings of the guardians of the said union when required by them, and to obey all lawful orders and directions of such guardians, and of the majority of the said overseers of the poor.
6. To perform all the duties prescribed by the poor law commissioners in their general order, dated the seventeenth day of March, one thousand eight hundred and forty-seven, so far as the same relate to the office of collector, and all rules, orders, and regulations to be hereafter issued by them applicable to his office.

*His accounts,]* With regard to the duty of the collectors in keeping their accounts, it is provided by the general accounts order of the poor law commissioners, dated the 17th March, 1847, as follows:—

*Art. 5.* Every collector already appointed or to be hereafter appointed by any board of guardians or other persons, under any order of the poor law commissioners, or under the provisions of any Act of Parliament, shall enter up so much of any books or forms of the overseers relating to the collection of the poor rate, or the relief of the poor herein prescribed, as he may be directed to enter up by the overseers for the time being, and shall enter in the rate book all such particulars of every assessment as he is directed by such overseers to enter therein; and every such collector shall attend before the auditor at the same time as the overseers of the parish for which he acts.

Provided that the signature of any such collector to any book presented to the auditor shall not be taken to stand for or supply the place of the signature of any overseer which may be otherwise required by this our order.

*Art. 6.* Every such collector shall in all cases fill up and use, as is hereinbefore directed in the case of overseers of parishes in which there are more than thirty rate-payers on the rate book, a *rate receipt check book*, in the form hereinbefore prescribed; and when he shall receive the amount due for poor rate on behalf of any parish or its officers, he shall,

at the time of receiving the same, and not before, give to the person paying such money a proper receipt, as directed in this order in the case of overseers, and shall insert in such receipt the true date of the receipt.

*Art. 7.* It shall be the duty of every collector, before he shall proceed to collect any rate, to prepare receipts in the aforesaid form, numbered both on the receipt and the note thereof with the same number consecutively throughout the book, and properly to fill in the same respectively with the names of the several rate-payers, and the sum to be collected from each; and to submit such receipt check book, so numbered and filled up, to the overseers of the parish for which such rate is to be collected, before he proceeds to collect the rate; and such overseers shall cause the correctness of the numbering, and the correspondence of the sums, and of the names filled in, with the rate book to which they relate, to be ascertained; and on the leaf next after the last of the receipts so made out in respect of any one rate, the said overseers shall certify the fact that such receipt check book has been examined and ascertained to be correct, and shall state in words at length the number of receipts filled up for the rate then to be collected. If upon the closing of any rate there shall remain in the rate receipt check book any receipts made out for such rate unused, the collector to whom such book shall belong shall enter upon each of such receipts the reason of its not having been used, and date and sign such entry.

*Art. 9.* Every such collector shall keep a book to be called the *collecting and deposit book*, in which shall be entered accurately, and under their true dates, all sums received and paid over by him as such collector, and also the number of every receipt given by him out of the said rate receipt check book.

*Art. 10.* The collector shall attend any of the ordinary meetings of the board of guardians, if thereunto required by them.

*Art. 12.* In every case in which there shall be more than one collector employed in the collection of any one rate, the provisions hereinbefore made shall apply to the portion of such rate assigned to each collector as if such portion were one entire rate.

By a further order of the poor law board, dated the 16th March, 1854, after rescinding all such parts of the before-mentioned order which shall be inconsistent or at variance with anything contained in such order (of 16th March, 1854), the board ordered and directed as follows:

*Art. 1.* The several columns of the rate book which contain the rateable value, and the rate in the pound assessed upon the several persons liable to be assessed, shall be added

up at the foot of every page, and the general total shall be ascertained and set forth at the foot of the rate, before the same shall be submitted to the justices for their allowance.

*Art. 2.* If the overseers shall deem it convenient, the rate may be divided into several portions corresponding with the several divisions of their parish, so as to bring all the rateable property of each division together, and there may be separate series of numbers for the assessments in every division.

*Art. 3.* When the owners of property are assessed instead of the occupiers, the overseers may, if they think proper, bring together and assess under one number all or any portion of the properties situated in the parish, or in the separate division, where the parish is divided into divisions, belonging to the same persons, and for which he shall be liable to be assessed as owner.

*Art. 4.* When any overseer or collector shall receive the whole amount due for poor rate from any person assessed, he shall at that time, and not before, detach the receipt applicable to such person's assessment from the check book, and deliver the same, stamped with an adhesive stamp, where the amount of the payment shall render such stamp necessary, to the person paying the same, and retain the note in the book.

He shall insert in the receipt and in the note thereof so retained the true date of the payment of the money.

When the rate shall be paid by instalments, the fact of every payment shall be noted on the back of the receipt and on the note thereof, and the receipt shall not be given to the persons paying the rate until the whole amount of the rate shall have been received, but an acknowledgment of the amount received shall be given in writing upon the demand note, or ticket, or otherwise, as the collector or overseer shall find convenient.

*Art. 5.* The form of the rate receipt check book shall be according to the form set forth in the schedule to the order.

*Art. 6.* The collector shall every week pay over all monies collected by him, or in his hands, belonging to the parish, to the banker whom the overseers may direct, to be placed to the account of one or more of them; or, if directed by one of the overseers, to the treasurer of the guardians of the union, in payment of any order from such guardians then due; or, in the absence of any such direction, shall pay the same to one of the said overseers in person: provided that as often as at any time in the course of any week the sum or sums of money in the hands of such collector belonging to the parish shall together exceed 50*l.*, he shall forthwith pay over such sum or sums in the manner hereinbefore directed.

*Art. 7.* The collector shall balance the collecting and de-



posit book monthly, at the times provided in the following article.

*Art. 8.* The collector shall keep a book containing blank forms of monthly statements, and shall every month fill up one of such statements with the several particulars set forth in the said form, which statement shall be made up to the last day of every calendar month inclusive; excepting in the case of the month of March, when it shall be made up to the 25th, and in that of the month of September, when it shall be made up to the 29th; so that any receipts or payments on the remaining days of those months respectively shall be included in the next monthly statement; and he shall forthwith deliver a copy of such statement, signed by himself, to one or more of the overseers and another to the board of guardians at their next ordinary meeting.

Provided that the board of guardians or the overseers of the parish may, if they think fit, require a statement containing the several particulars set forth in the said form, to be made out and delivered to them respectively every week or fortnight; and the clerk to the guardians shall preserve the copies forwarded to the board of guardians, and shall produce the same to the auditor at the next audit.

*Art. 9.* The collector shall at each audit produce to the auditor an unpaid rates statement, showing the name of every person rated to the relief of the poor in respect of whom there shall be, at the end of the half-year for which the audit is being held, any arrear of the rate made immediately before that in the course of collection at that time, with the other particulars according to the form set forth in the schedule to the order.

*His salary.]* The order also provides that the board of guardians shall pay to the officer appointed to an office under this order, a salary at and after the rate of £—— per annum, and shall charge the same to the said parish.

The salary of such officer shall be payable up to the day on which he ceases to hold such office, and no longer, and shall be paid by equal periodical payments in like manner as the salaries of the other paid officers of the union are paid, with a proportionate sum to be paid to his executors or administrators in case he shall die while holding such office.

No collector who may be suspended, and who shall, upon such suspension, resign, or be removed by the poor law board, shall be entitled to any salary from the date of such suspension; and no such officer who shall be temporarily suspended from his office by reason of his services not being required, shall be entitled to any salary pending such temporary suspension.

*Security.*] That every person appointed to such office shall give a bond in such penal sum as the said guardians shall think fit, in the names of himself and two sufficient sureties, not being officers of the said union, conditioned for the due and faithful performance of the duties of the office; and every such officer shall give immediate notice to the said guardians of the death, insolvency, or bankruptcy of either of such sureties, and shall, when required by the said guardians, produce a certificate, signed by two householders, that his sureties are alive and believed by them to be solvent, and shall supply a fresh surety in the place of any such surety who may die, or become bankrupt or insolvent. Provided that the guardians may, if they think fit, take the security of any society or company expressly authorized by statute to guarantee or secure the faithful discharge of the duties of any poor law officer.

Too much care cannot be taken in reference to the bonds given by the collector, for if any change take place in the nature of his duties, whereby the check on his accounts is lessened, the sureties may become released. Where a parish was divided into districts, and one collector was shifted to a new district, it was held his duties were not changed in the above sense, for he bound himself to be collector for the parish generally. *Guardians of Portsea Island Union v. Whillier*, 24 J. P. 679.

*Continuance in office, &c.*] And that every officer appointed under this order shall continue to hold the said office until he shall die, or resign, or be removed by the poor law board, or be proved to be insane by evidence which such board shall deem satisfactory; and upon such death, resignation, removal, or insanity of any such officer, the said guardians shall give notice thereof to the poor law board, and proceed to appoint some person in his place, according to the provisions of this order.

The said guardians may, at their discretion, suspend from the discharge of his duties any such collector, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to the poor law board, for the decision of the poor law board thereon; and in every case of resignation the said guardians shall transmit to the poor law board a statement of the cause of such resignation, so far as it may be known to them.

If any officer appointed under this order be at any time prevented by sickness or accident, or other sufficient reason, from the performance of his duties, the guardians may appoint a fit person to act as his temporary substitute, and may pay such person a reasonable compensation for his services; and every such appointment, with a statement of the circumstances

which have led to it, shall be reported to the poor law board as soon as the same shall have been made.

As to their accounting, &c., and their punishment for embezzlement, or for not obeying the orders of justices and guardians, &c., see *post*, tit. "*Paid Officer*."

A collector may compel the overseers, by mandamus, to deliver the rate books to him, if necessary for performing his duties. *E. v. Christchurch*, 20 J. P. 533.

He cannot sue the guardians who appointed him for poundage on the sums collected, unless they expressly contracted so to be liable. *Smart v. Guardians of West Ham Union*, 20 J. P. 596. And he is bound to account to the existing overseers and deliver up to them the rate books after his retirement, though he may have accounted to their predecessors. *Sellar v. Griffin*, 27 J. P. 348.

## CONSTABLES.

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### 1. PETTY CONSTABLES.

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#### 1. *Who may be.*

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*Who qualified.*] Every able-bodied man resident within the parish, between the ages of twenty-five years and fifty-five years, rated to the relief of the poor, or to the county rate, on any tenements of the net yearly value of 4*l.* or upwards (except such persons as shall be exempt or disqualified as hereinafter mentioned) shall be qualified and liable to serve as constable of that parish. 5 & 6 Vict. c. 109, s. 5.

*Who exempted.*] All peers;—all members returned to serve in the commons' house of parliament;—all judges of Her Majesty's courts of record at Westminster;—all justices of the peace;—all deputy lieutenants;—all clergymen in holy orders;—all priests of the Roman Catholic faith who shall have duly taken and subscribed the oaths and declarations required by law;—all persons who shall teach or preach in any congregation of Protestant dissenters, whose place of meeting is duly registered, and who shall follow no secular occupation, except that of a schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law;—all schoolmasters;—all serjeants and barristers at law actually practising;—all members of the society of doctors at law and advocates of the civil law actually practising;—all attorneys, solicitors, and proctors duly admitted in any court of law or equity, or of ecclesiastical or admiralty jurisdiction, in which attorneys, solicitors, and proctors have usually been admitted, actually practising, and having duly taken out their annual certificates;—all conveyancers and special pleaders below the bar;—all officers of any such courts actually exercising the duties of their respective offices;—all coroners, gaolers, and keepers of houses of correction;—all members and licentiates of the royal college of physicians in London, actually practising;—all surgeons, being members of one of the royal colleges of surgeons in London, Edinburgh, or Dublin, and actually practising;—all apothecaries having obtained a certificate to practise as an apothecary from the master, wardens, and society of apothecaries of the city of London, and actually practising;—all officers in Her Majesty's navy or army on full pay;—all persons enrolled and serving in any corps of yeomanry under officers having commissions from Her Majesty, or lieutenants of counties, or others specially authorized by Her Majesty for that purpose;—all pilots licensed by the Trinity-house of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations;—and all pilots licensed by the lord-warden of the cinque ports, or under any Act of Parliament or charter for the regulation of pilots in any other port;—all the household servants of Her Majesty;—all officers of customs and excise;—all sheriffs and sheriffs' officers;—all high constables;—the clerks of the boards of guardians of the poor;—the masters of all union workhouses;—all county or district constables;—all parish clerks;—all registrars and superintendent registrars of births, deaths, and marriages;—all churchwardens, overseers, and relieving officers;—[and all post-masters and persons employed in the business of the post office, 18 & 14 Vict. c. 20,

## *How appointed for Parish.*

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s. 5.]—shall be freed and exempt from serving the office of constable under this Act. 5 & 6 Vict. c. 109, s. 6.

*Who disqualified.*] All licensed victuallers and persons licensed to deal in any exciseable liquors or to sell beer by retail,—all gamekeepers,—and all persons who have been attainted of any treason or felony, or convicted of any infamous crime,—shall be disqualified from serving the office of constable under this Act. 5 & 6 Vict. c. 109, s. 7.

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Formerly constables were usually appointed at the court leet, or, in default thereof, by justices of the peace; sometimes otherwise by statute or custom. But now by stat. 5 & 6 Vict. c. 109, s. 21, no petty constable, headborough, borsholder, tithingman, or peace officer of the like description under any name of office, shall be appointed for any parish, township, or vill, within the limits of the Act, except for the performance of duties unconnected with the preservation of the peace or with the execution of the Act, at any court leet or torn, or otherwise than under the provisions of the Act, or under the provisions of stat. 2 & 3 Vict. c. 93, or of some Act passed for the amendment thereof. But nothing shall prevent the appointment of special constables,—or apply to the city of London or the metropolitan police district,—or any borough which is within the provisions of the Municipal Corporations Act, 5 & 6 Will. 4, c. 76, or of any charter granted in pursuance of that Act, or of any Act made for the amendment thereof,—or any parish, town, or place in which rates are or shall be levied for the payment of constables, under the provisions of stat. 3 & 4 Will. 4, c. 90, or of any local Act specially applying to such parish, town, or place; and nothing shall apply to the county palatine of Chester. 5 & 6 Vict. c. 109, s. 21. And when a parish is partly within, partly without such exempted place, only those resid-

ing within the exempted part of the parish shall be exempt from serving as constables under the above Act. 7 & 8 Vict. c. 52, s. 4. Also, by stat. 2 & 3 Vict. c. 93, s. 25, upon the appointment of constables for a county, the power to appoint and pay, and to make rates for paying any constables in any hundred, parish, township, or place within such county, except boroughs incorporated under the provisions of stat. 5 & 6 Will. 4, c. 76, other than high constables, or other than special constables, shall cease; provided however that nothing herein contained shall prevent the appointment of parochial constables.

*Special sessions.*] On some day after the 24th March and before the 9th April in each year, the justices of the peace of every county [and of every liberty having a separate commission of the peace, and not being an incorporated borough, 7 & 8 Vict. c. 52, s. 1,] shall hold a special petty session of the peace in their several divisions for the appointment of parochial constables, of which session due notice shall be given [by the clerk to the justices, 13 & 14 Vict. c. 20, s. 4,] to every justice usually acting in that division. 5 & 6 Vict. c. 109, s. 1.

*Precepts to the overseers.*] The justices shall, within the first seven days of February in each year, issue a precept under the hands of any two of them, to the overseers of each parish, [township, &c.] within the division, requiring them to make out and return, before the 24th March in each year, a list in writing of a competent number of men within their respective parishes, &c., qualified and liable to serve as constables, and also to perform all other requisitions in the said precepts contained; and with the said precept shall be given notice to the said overseers of the time and place where such special session of the peace as aforesaid will be holden. 5 & 6 Vict. c. 109, s. 2.

*Lists by vestry.*] The overseers of every parish, [township, &c.] upon the receipt of such precept, shall summon a meeting of the inhabitants in vestry, to be holden within fourteen days after the receipt of the said precept; and the vestry at such meeting shall make out a list in writing of such number as shall be named in the precept of men residing within their parish, &c., who shall be qualified and liable to serve as constables, with the christian name and surname, and with the true place of abode, the title, quality, calling or business of each, written at full length; but the vestry may annex to the return the names of any number of men willing to serve the office of constable, and whom the vestry will recommend to be

appointed, although not having the qualification hereinafter mentioned: 5 & 6 Vict. c. 109, s. 3.

The vestry has no right to resolve that the appointment of parish constables is unnecessary, seeing that there are rural police, for it is in the justices' discretion, and not in that of the parish, to require the appointment of parish constables. *E. v. Inhabitants of North Bierley*, 23 J. P. 183.

In parishes in which the Vestries Act (13 & 14 Vict. c. 57) is in force, the lists of constables are to be made out and published by the vestry clerk of the parish. *Id.* s. 7.

*Union of parishes for the purpose.*] It shall be lawful for the justices at a special petty session of the peace to be holden for that purpose, at any convenient time before the issuing of such precept (of which last-mentioned session due notice shall be given to every justice usually acting within the division), to make an order for uniting any parishes, [townships, &c.] whenever they shall think it expedient for the purposes of this Act; and a copy of such order shall be served on the overseers of every parish, &c., so united, with the precept mentioned; and every such parish or extra-parochial place so united shall thenceforward be deemed, for all the purposes of this Act, to be a part of such adjoining parish, &c.; and the inhabitants thereof shall be entitled to attend and vote at any meeting in vestry for the purposes of this Act of the inhabitants of the parish, &c., to which such parish [or township] is united, as fully as if they were inhabitants of the parish, &c., where such meeting is holden. 5 & 6 Vict. c. 109, s. 4.

*Overseers to return the lists.*] The overseers of each parish, &c., shall make out true copies of the lists agreed to in vestry; and where any of the persons named in the list shall have been chosen to serve, and shall have served, the office of constable in the said parish, in person or by substitute, the overseers are to set against his name in the list the date of the year of such service, and shall on the first three Sundays in the month of March in each year, fix a true copy of such list upon the principal door of every church, chapel, and other public place of religious worship within their parish, having first subjoined to every such copy a notice, stating that all objections to the list will be heard by the justices of the peace at the time and place mentioned in such notice, and having also signed their names at the foot of such copy;—and shall likewise keep the original list, or a true copy thereof, to be perused by any of the inhabitants of their parish, &c., at any reasonable time during the first three weeks of the month of March in each year, without any fee or reward;—and on or before the day



limited for making their return shall sign and return the original list to the justices as required by the precept, under a penalty of 5*l.* 5 & 6 Vict. c. 109, ss. 8, 9.

And the overseers of each parish, &c., shall attend the special session of the peace to be holden for the appointment of constables in their parish, &c., and shall then and there verify the list so returned by them, and shall answer on oath such questions touching the same as shall be put to them by the justices; and if any man not qualified and liable to serve is inserted in any such list, the justices, upon being satisfied that he is not qualified and liable to serve as constable, may strike his name out of such list; and also strike thereout the names of men disabled by lunacy or imbecility of mind, or by deafness, blindness, or other infirmity of body, from serving as constable; and when every such list shall be duly corrected, it shall be allowed by the justices present, or two of them at such session, or such adjournment, who shall sign the same, with their allowance thereof. 5 & 6 Vict. c. 109, s. 10.

*Appointment.]* And when any list shall have been allowed, the justices shall choose from the allowed list the names of such number of persons as they shall deem necessary (having regard to the extent and population of the parish, &c.) to act as constables within the parish, &c. during the year then next following, and until other constables shall be chosen and sworn to act in their stead as constables for such parish, &c.: provided always, that where any person shall have been chosen to serve, and shall have served, the office of constable, either in person or by substitute, he shall not be liable to be again chosen until every other person in the parish liable and qualified to serve shall have also served. 5 & 6 Vict. c. 109, s. 11.

*Swearing in.]* The justices shall cause the persons so chosen to be summoned to appear before them on a day to be fixed by such justices, and shall cause to be administered to every such person the following oath; (that is to say,)

*I, A. B., of C., do swear, that I will well and truly serve our sovereign Lady the Queen in the office of constable for the parish of D. [or parishes of D., E., &c.,] for the year now next following, or until another constable shall be sworn in my stead, according to the best of my skill and knowledge. So help me God.* 5 & 6 Vict. c. 109, s. 12.

*Substitutes.]* But if any qualified person chosen shall be unwilling to serve the office of constable in person, and shall

find a substitute, to be approved by the justices, and shall attend with his proposed substitute at the time and place appointed for swearing in constables, the justices, if they shall approve, shall cause the oath to be administered to him, instead of the person chosen; but the service of any substitute shall not be reckoned as his own service, so as to exempt him from being sooner chosen to serve in his own person than otherwise he would have been liable to. 5 & 6 Vict. c. 109, s. 12. This section does not in terms require any particular qualification in the substitute so proposed and sworn. See *Re Booth*, 18 Law J. 25, m.

*Lists of those appointed.]* Within fourteen days after the appointment and swearing of such constables, the clerk to the justices shall send to every justice usually acting within the division, and also to the clerk of the peace, for the purpose of being laid before the next court of general or quarter sessions, a list containing the names of all constables so appointed in the division, and the parishes, &c. for which they have been appointed; and the overseers of the poor shall affix to the door of their respective parish churches a list of the names of the constables appointed in their respective parishes, &c. 5 & 6 Vict. c. 109, s. 14.

*Refusing to serve.]* Every person qualified and liable to serve, and who shall be chosen, and duly summoned to be sworn, and who shall refuse, or (without reasonable cause, to be allowed by the said justices,) neglect to be sworn, or to find a substitute,—shall, upon conviction, forfeit and pay any sum not more than 10*l.*; and every person who, after being sworn, shall refuse or wilfully neglect to act in the office, shall, upon conviction, forfeit and pay for every such offence any sum not more than 5*l.* 5 & 6 Vict. c. 109, s. 13.

*Vacancy by death, refusal to serve, &c.]* In case of the death, disqualification, [or discharge, 13 & 14 Vict. c. 20, s. 1,] of any constable during his year of office, of which the overseers shall forthwith give notice to a justice of the peace usually acting for the division,—or in case any person chosen shall refuse or neglect as aforesaid, and shall have been fined,—the person who has last served, and shall not then be disqualified, or exempt, shall be bound to act in his stead until another constable shall be appointed and sworn, which shall be done at the next petty session of the peace for the division, of which notice shall be given to all the justices; and the justices at such sessions shall choose another qualified person, out of the allowed list then in force, to serve the office during the remainder of the year; and if less than 200 days shall

have elapsed since the first appointment of constables for that year, but not otherwise, the service of the person appointed to act for the remainder of the year shall be reckoned to him as service for that year. 5 & 6 Vict. c. 109, s. 16.

*Paid constables, in what cases, and how appointed.*] The vestry assembled for the purpose of making such return as aforesaid, may resolve that one or more paid constables shall be appointed for the parish, &c.; and if the vestry shall so resolve, a copy of the resolution, and of the amount of salary which the vestry shall resolve on paying to such constable or constables, shall be sent by the overseers to the justices, with the return hereinbefore mentioned. 5 & 6 Vict. c. 109, s. 18.

And the justices upon receiving from any parish a copy of any such resolution, if satisfied, shall appoint so many paid constables to act for the parish, &c., as shall be agreed to by the resolution,—or, if agreed to by more parishes than one, may appoint the same paid constables to act conjointly for all such parishes; and in every parish in which a paid constable shall be appointed, the justices need not appoint any unpaid constable, or may appoint a smaller number of unpaid constables than they had otherwise resolved on; and every paid constable shall hold his appointment until he shall resign or be dismissed for misconduct by the justices of the division in petty session assembled, or until the vestry shall rescind the resolution for his appointment. 5 & 6 Vict. c. 109, s. 19. And in case of the death, resignation, or dismissal for misconduct of any paid constable, at any time, the justices of the division, in petty sessions assembled, may forthwith appoint another paid constable from and out of the list of constables at the same rate of salary as agreed by the vestry. 13 & 14 Vict. c. 20, s. 3. The amount of the salary to the paid constable is to be paid by the overseers out of any monies in their hands collected for the relief of the poor. *Id.* s. 20.

*Superintendents.*] The justices of the peace of any county, in general or quarter sessions assembled, may appoint a superintending constable for each or any petty sessional division within the said county, who shall have all the powers and immunities of a parish constable under 5 & 6 Vict. c. 109, and shall have the superintendence of all the parish constables, under regulations, and shall perform such duties as the justices shall require; and whenever the justices shall have provided a lock-up house, they shall also appoint a constable to have the charge thereof, who shall have the powers and immunities of a parish constable under 5 & 6 Vict. c. 109; and every superintending constable and constable so appointed to the

charge of a lock-up house, shall be entitled to hold his office until dismissed by the justices, and shall receive such salary and allowances out of the county rates as the justices assembled as aforesaid shall order. 13 & 14 Vict. c. 20, s. 6.

### 3. *Lock-up Houses.*

By 5 & 6 Vict. c. 109, s. 22, the justices of the peace of any county in general or quarter sessions assembled, if they shall think fit, may order that lock-up houses for the temporary confinement of persons taken into custody by any constable, and not yet committed for trial, or in execution of any sentence, shall be provided in such places within their county as the said justices shall think fit; and for that purpose they may purchase and hold lands and tenements; or, instead of lock-up houses, they may order that the lock-up houses, strong rooms or cages belonging to any parish be appropriated for the purpose; and the expense shall be defrayed out of the county rates: provided always, that notice shall be given by the clerk of the peace, with the notice of holding the session, on the requisition of any five justices acting for such county; and that such lock-up house shall be approved by one of Her Majesty's principal secretaries of state, and be within the inspection of the inspectors of prisons. Also, provision is made by 11 & 12 Vict. c. 101, for the erecting, hiring, or otherwise providing lock-up houses on the borders of adjoining counties, boroughs, &c., and every such lock-up house shall be deemed a lock-up house in and for each of the counties and boroughs for the joint use of which the same shall be provided, and all justices, constables, and others shall have authority accordingly. *Id.* s. 5.

### 4. *Constables' Fees, Allowances, &c.*

*Their ordinary fees, allowances, &c.*] The justices of the county shall (subject to the approval of one of Her Majesty's principal secretaries of state) settle tables of fees and allowances to the constables for the service of summons and execution of warrants, and for the performance of other duties for which the justices shall think that fees ought to be allowed; and the amount of the fee or allowance shall be paid by the overseers out of any monies in their hands collected for the relief of the poor, upon the order of the justices in petty session assembled for the division, and under such regulations as shall be made from time to time by the justices in general or quarter session assembled, subject to the approval of the secretary of

state. 5 & 6 Vict. c. 109, s. 17. This provision has been extended by the 13 & 14 Vict. c. 20, and a fee may now be paid to the constables, for the execution of any order of a justice, made in writing, or for the performance of any occasional duties, the same being sanctioned and allowed by justices in petty sessions assembled. As to paid constables, see *ante*, p. 126.

*Expenses on account of parish.*] By 18 Geo. 3, c. 19, s. 4, every constable, headborough, or tithingman shall "every three months, and within fourteen days after he shall go out of such office," deliver to the overseers of the poor of his parish, township, or place, an account, fairly entered in a book to be kept for the purpose, and signed by him, of all sums expended by him or received by him on account of such parish; the overseers shall then lay such account before the inhabitants, and if the majority approve of it, the overseers shall pay the amount out of the poor rates; but if the account be not approved of, it shall be given back to the constable, who may then produce the same before any justice of the peace of the county, who shall settle the sum due, and the overseers shall then pay such sum out of the poor's rate. Expenses incurred by a constable, in prosecuting for an assault upon himself in the execution of his duty relative to parish business, (*R. v. Bird et al.*, 2 B. & A. 522,) or in prosecuting a person taken by him in the act of committing an offence in a place of religious worship, having been bound over to prosecute, (*R. v. Seville et al.*, 5 B. & A. 180,) are not within the meaning of this statute.

### 5. *Their Punishment for Offences.*

*Extortion.*] Extortion by a constable is the taking of money by him, under colour of his office, either where none at all is due, or where he takes more than is due, or where it is not yet due. 1 *Hawk.* c. 68, s. 1. See *R. v. Higgins*, 4 Car. & P. 247. It is a misdemeanor at common law, punishable upon indictment with fine or imprisonment, or both. See 1 *Hawk.* c. 68, s. 5.

*False imprisonment.*] The slightest detention of a party, or restraint of his personal liberty against his will, is in law an imprisonment; and if this be done without lawful authority, it is technically termed false imprisonment. It is punishable upon indictment as a misdemeanor at common law, with fine or imprisonment, or both: or the party may have his remedy by action. If therefore a constable take a person into custody, or at all apprehend or arrest him, where by law he has no

authority to do so, he is liable to an indictment or action for it, as for a false imprisonment. In what cases a constable is authorized to arrest, see *post*. And it may be necessary to add, that if the warrant be good on the face of it, and be for a matter of which the justice or justices who granted it had jurisdiction, and be executed by the constable within the district for which he may act, he will be fully justified in executing it, and making the arrest under it, although the party be innocent of the offence for which he is arrested, and there be no pretence for charging him with it.

*Neglect of duty or disobeying orders of justices.*] Upon complaint made on oath the justices may impose any reasonable fine, not exceeding 40s., upon a constable, &c., as a punishment for disobedience or neglect of duty, to be applied and disposed of for the relief of the poor of the parish, &c. where the offender shall reside; the same to be levied by distress, or for default of distress they may commit the offender for a time not exceeding ten days. The person convicted may appeal to the next general or quarter sessions, giving at least ten days' notice of appeal. 33 Geo. 3, c. 55, s. 1.

*Permitting escape.*] If a constable, having a prisoner in lawful custody, allow him to escape, it is either through negligence or done intentionally; which latter is technically termed a voluntary escape. A negligent escape is a misdemeanor, and punishable upon indictment with fine or imprisonment, or both. A voluntary escape is punishable in like manner as a misdemeanor, whether the party escaping were guilty or not of the offence imputed to him; 2 *Hawk.* c. 19, s. 26; but if he be retaken and convicted then the offence of the constable in allowing him to escape is punishable in the same manner as the offence of which the party was convicted, and is of the same degree, whether treason, felony, or misdemeanor. 2 *Hawk.* c. 19, s. 22. In order, however, to constitute an escape of either kind punishable as above mentioned, there must have been an actual arrest of the party, justifiable in point of law, (2 *Hawk.* c. 19, s. 2,) and upon a criminal charge. *Id.* s. 3.

#### 6. Constables, how Protected.

*Actions against them.*] If an action be brought against a constable for anything done by him in the execution of his office, the action must be commenced within six calendar months; 24 Geo. 2, c. 44, s. 8; *Partan v. Williams*, 3 B. & A.

530; the venue must be laid in the proper county; the defendant may plead the general issue, and give the special matter in evidence; 7 Jac. 1, c. 5; 21 Jac. 1, c. 12; and the defendant if he recover shall have full costs. *Id.* 5 & 6 Vict. c. 97, s. 2. And he shall be deemed to be within this protection, where the act for which the action is brought was *bona fide* done by him, intending to do his duty. *Gosden v. Elphick*, 19 Law J. 9, *ex.*

Where the act complained of was done by him in obedience to a justice's warrant, a demand of a perusal and copy of the warrant must be made upon him before the action is commenced: if he do not give it within six days, the plaintiff may bring his action against him alone; but if he give it, then the justice must also be made defendant in the action, otherwise the constable, on proof of the warrant at the trial, shall have a verdict; or if the plaintiff make the justice a party, the constable shall still be entitled to a verdict, but the plaintiff, if he recover against the justice, shall also recover against him any costs he may have been obliged to pay to the constable. 34 Geo. 2, c. 44, s. 6.

*Assaulting them.*] Assaulting a constable, or other peace officer in the due execution of his duty, is punishable upon indictment as a misdemeanor, with imprisonment, with or without hard labour, for not more than two years, and the court may also fine the offender, and require him to find sureties for keeping the peace. 9 Geo. 4, c. 81, s. 25. The prosecutor will also be entitled to the costs of the prosecution. 7 Geo. 4, c. 64, s. 23. See also *post*, "Duties of Constables."

*Killing them, or being killed by them.*] If a constable, or any person acting in his aid, be killed in endeavouring to execute a magistrate's warrant,—if the warrant be legal, and the slayer had notice, either expressly or from circumstances, of the deceased being a constable, and of the intent of the arrest, the law in that case implies malice, and the slayer will be guilty of murder. But if the warrant be bad on the face of it, as being too general, or the like, the killing in such a case will be manslaughter only. So, if a constable without warrant, apprehend or attempt to apprehend an offender, in a case where by law he may do so, and be killed in so doing, it will be murder; but if it happen in a case where he has no authority by law to apprehend the party, the killing will be manslaughter only. *Arch. New Cr. Law*, 29, 30. And if, to resist or prevent lawful apprehension, a man shoot at or attempt to shoot at the constable attempting to apprehend him, or shall stab, cut, or wound him, it will be a felony, punishable with transportation for life, or for not less than

fifteen years, or imprisonment, with or without hard labour, for not more than three years. 1 Vict. c. 85, s. 4.

On the other hand, if a constable, in endeavouring to make a legal arrest, be resisted, and in opposing force to force he happen to kill the party, the homicide is justifiable; and he is not bound to retreat, as in the ordinary case of *se defendendo*: but if the arrest would have been illegal, the killing would amount to manslaughter. So where a party may lawfully be arrested for felony, and he, knowing the cause, flies, so that he cannot be taken otherwise than by killing him, the constable pursuing him will be justified in killing him. But where the arrest is for a misdemeanor only, a constable will not be justified in killing in pursuit; and if in such a case he kill with a deadly weapon, it will be murder; if otherwise, manslaughter; or if he fire at and wound the party, he may be indicted as for a felony under 1 Vict. c. 85. *Arch. New Cr. Law*, 29. See *R. v. Dadson*, 20 Law J. 57, m.



## 2. BOROUGH CONSTABLES.

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*How appointed and regulated.*] The Municipal Corporations Act, 5 & 6 Will. 4, c. 76, s. 76, after providing for the appointment of a watch committee in each of the boroughs to which that Act relates, enacts that such watch committee shall, within three weeks after their first formation, and so from time to time thereafter as occasion shall require, appoint a sufficient number of fit men, who shall be sworn in before some justice of the peace, having jurisdiction within the borough, to act as constables. And the committee, or any two justices, may at any time suspend or dismiss any constable whom they shall think negligent in the discharge of his duty, or otherwise unfit for the same; and no man so dismissed shall be re-appointed without the consent of two justices. 5 & 6 Will. 4, c. 76, s. 77.

*Their duties.*] The men so sworn shall, not only within such borough, but also within the county in which such borough or part thereof shall be situated, and also within every county being within seven miles of any part of such borough, and also within all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable duly appointed now has or hereafter may have within his constablewick by virtue of the common law of this realm, or of any statutes made or to be made. 5 & 6 Will. 4, c. 76, s. 76. But the county police constables shall not be required to act within a borough having a separate police, except to execute their own warrants, or an emergency. 22 & 23 Vict. c. 32, s. 2. The borough constables shall obey all lawful commands of justices of the peace within such borough. 5 & 6 Will. 4, c. 76, s. 76. They are to preserve the peace by day and by night, to prevent robberies and other felonies, and to apprehend all idle and disorderly persons whom they shall find disturbing the public peace, or whom they shall have just cause to suspect of intention to commit a felony. 5 & 6 Will. 4, c. 76, s. 78.

*In what cases they may take bail.*] Where any person is charged with any petty misdemeanor, it shall be lawful for such constable, if he shall think fit, to take bail by recognizance, without any fee or reward, from such person, condi-

tioned that such person shall appear for examination within two days before a justice of the peace within the borough at some time and place to be specified in the recognizance; and the constable shall enter in a book to be kept for that purpose in every watch-house, the names, residence, and occupation of the party, and his surety or sureties, &c.; and if the party does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognizance to be drawn up, to be signed by the constable, and shall return the same to the next general or quarter sessions, and the clerk of the peace shall make estreat of every such recognizance, and the justice shall be at liberty to enlarge the recognizance; and when the matter shall be heard and determined, the recognizance for the appearance of the party before a justice shall be discharged without fee or reward. 5 & 6 Will. 4, c. 76, s. 79.

*Penalty for neglect of duty.*] If any constable of any borough shall be guilty of any neglect of duty, or disobedience of any lawful order, every such offender shall be liable to be imprisoned for ten days, or fined 40s., or dismissed from his office, as such justices shall think meet. 5 & 6 Will. 4, c. 76, s. 80. As to suspension, see p. 138.

*Assaulting them in the execution of their duty.*] If any person shall assault or resist any constable of any borough appointed under this Act in the execution of his duty, or shall aid or incite any person so to assault or resist, every such offender shall forfeit 5*l.*, or be liable to prosecution by way of indictment. 5 & 6 Will. 4, c. 76, s. 81.

*Their wages, expenses, &c.*] The treasurer of every borough shall pay to the constables such salaries, wages and allowances, and at such periods, as the watch committee for such borough shall direct;—and the council shall order to be paid also any extraordinary expenses incurred, such expenses having been first examined and approved by such justice;—and the said treasurer shall also pay further sums as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or shall be worn out by length of service,—and all other charges and expenses which the watch committee shall (subject to the approbation of the council) direct to be paid. 5 & 6 Will. 4, c. 76, s. 82. But borough constables are not to receive fees for any act done by them; or if they receive fees where legally payable, they must hand them over to the treasurer of the borough. 19 & 20 Vict. c. 69, s. 8. See also pp. 138, 141. As to superannuation, see p. 142.

## 3. COUNTY CONSTABLES.

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*In what cases appointed.*] In every county in which a constabulary has not been established for the whole of such county under former Acts, the justices of such county shall proceed to establish a sufficient police force, and declare the number of constables they propose, and the rates of pay, and shall report such proceedings to one of Her Majesty's principal secretaries of state; and upon the receipt from the secretary of state of such rules as are mentioned in 2 & 3 Vict. c. 93, s. 3, all the provisions of the said Act, and of 3 & 4 Vict. c. 88, shall take effect and be applicable to such county. 19 & 20 Vict. c. 69, s. 1. And in any county where constables have been or shall be appointed under former Acts and this Act there shall be one general county police establishment; and a chief constable shall be appointed for such county, in like manner and with the like powers as in any case where a police force is established for the whole county in the first instance. *Id.* s. 3. However, upon the petition of persons contributing under the said Acts, it shall be lawful for Her Majesty to order said justices thereupon to divide such county into police districts, and declare the number of constables which ought to be appointed for each police district. *Id.* s. 4. Or police districts may be consolidated together or with parts of counties. 22 & 23 Vict. c. 32, s. 1. And for these purposes, all detached parts of counties, and also all liberties and franchises shall be considered as forming part of that county, &c., with which it shall have the longest common boundary. 2 & 3 Vict. c. 93, s. 27.

And by stat. 3 & 4 Vict. c. 88, s. 2, reciting that many

populous towns are situated in more than one county; and also that the boundary of many counties is irregular, it shall be lawful for the justices of any two or more neighbouring counties, to agree that such parts of their several counties as to them shall seem fit, shall, for the purposes of the said Act, be considered as forming part of any other of the said counties. 3 & 4 Vict. c. 88, s. 2. But the Act (2 & 3 Vict. c. 93) shall not extend to authorize the justices of the peace of any county to appoint any constable within any borough; nor shall any such borough, for which a separate court of quarter sessions of the peace shall be holden, be liable to contribute to the expenses of this Act. 2 & 3 Vict. c. 93, s. 24. The power to appoint and pay, and to make rates for paying, any constables, in any hundred, parish, township, or place within such county, division or divisions, except boroughs, other than high constables, or other than special constables appointed under stat. 1 & 2 Will. 4, c. 41, or of any Act made for enlarging the powers of magistrates under the said Act, or otherwise than under this Act, and also all the powers and duties of all such constables, shall cease and determine; provided also, that nothing herein contained shall prevent or invalidate the appointment of parochial constables. 2 & 3 Vict. c. 93, s. 25.

*Appointment of the chief constable.*] The justices of the county shall, subject to the approval of the secretary of state, appoint a person duly qualified to be chief constable of the county, and may dismiss the same: provided that when any county shall have been divided for the purpose of returning members to serve in parliament for each division, it shall be lawful to appoint two chief constables for such county, if the justices think fit: provided also, that it shall be lawful to appoint the same chief constable for two or more adjoining counties or parts of counties if the justices mutually agree. 2 & 3 Vict. c. 93, s. 4. And in any county in which two chief constables shall have been appointed, separate accounts shall be kept of the expenses, and the police rates shall be assessed and levied separately upon the districts of each chief constable, and applied separately to the expenses of the police force maintained therein. 3 & 4 Vict. c. 88, s. 25. And every chief constable shall, on the first day of every month, transmit to the clerk of the peace for the county, for which or for some district whereof such constable shall act, a return showing the actual disposition and number of the constabulary force of the county or district. 3 & 4 Vict. c. 88, s. 31.

*Deputy chief constable.*] The chief constable shall (subject to the approval of the justices, appoint one of the superintendents to act as his deputy: provided always, that no deputy chief constable shall be capable of continuing to act with the

powers of chief constable during any vacancy of the office for more than three calendar months after the vacancy has been occasioned. 2 & 3 Vict. c. 98, s. 7.

*Superintendents, &c.*] It shall be lawful for the justices in general or quarter sessions assembled, with the approval of one of Her Majesty's principal secretaries of state, to direct how many of the constables shall be appointed superintendents, and to direct the appointment of inspectors and sergeants and other subordinate officers, with gradations of rank and pay. 3 & 4 Vict. c. 88, s. 26. And every superintendent shall, on the first day of every month, send to the chief constable a return showing the actual disposition and number of the constables under his superintendence. *Id.* s. 32.

*Appointment of the petty constables.*] Subject to the approval of two or more of the justices, the chief constable shall appoint the other constables to be appointed for the county, and at his pleasure may dismiss all or any of them. 2 & 3 Vict. c. 98, s. 6. And no constable appointed under this Act shall be at liberty to resign his office, or to withdraw himself from the duties thereof, unless expressly allowed so to do, in writing, by the chief constable or superintendent under whom he may be placed, or unless he shall give to such chief constable or superintendent one calendar month's notice of his intention; and if any constable shall so resign or withdraw himself without such leave or notice, notice thereof shall be given by the chief constable or superintendent to the treasurer of the county, and all arrears of pay then due shall be forfeited, and he shall be liable to a penalty of 5*l*. 22 & 23 Vict. c. 32, s. 4. And all chief or other constables appointed under this Act, shall be restrained from employing themselves in any office or employment for hire or gain, other than in the execution of their duties under this Act, and shall be exempt from being returned and from serving upon any juries or inquests whatsoever, or in the militia, nor shall they be inserted in any jury lists while they shall continue to be such constables. 2 & 3 Vict. c. 98, s. 10.

And every person not being a constable, who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to any such constable, and who shall not be able satisfactorily to account for his possession thereof, or who shall put on the dress, or take the name, designation, or character of any person appointed as such constable, for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which such person would not be entitled to do or

procure to be done of his own authority, or for any other unlawful purpose, shall, in addition to any other punishment to which he may be liable for such offence, be liable, on being convicted thereof before any two justices of the peace for the county, to a penalty not more than 10*l*. *Id.* s. 15.

*Station-houses.*] The justices of any county in which or in any part of which constables shall be appointed under stat. 2 & 3 Vict. c. 93, if they think fit, may order that station-houses and strong rooms, or either of them, for the temporary confinement of persons taken into custody by the constables, be provided; and the expense of building, hiring, or otherwise providing, repairing, and furnishing such station-houses and strong rooms shall be defrayed out of the police rates. 3 & 4 Vict. c. 88, s. 12. And for facilitating the purchase of lands and tenements for the purposes mentioned in stat. 3 & 4 Vict. c. 88, s. 12, the provisions of "The Lands Clauses Consolidation Act, 1845," except the provisions with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with the said Act. 19 & 20 Vict. c. 69, s. 23. And unnecessary station-houses, &c., may be disposed of. 7 Geo. 4, c. 18. 19 & 20 Vict. c. 69, s. 24. The justices may borrow money for the purpose of purchasing station-houses and strong rooms. 3 & 4 Vict. c. 88, s. 13. But where a station-house or strong room shall have been provided under the Act 3 & 4 Vict. c. 88, s. 12, for any police district or division within any county in which the provisions of the said Act have not been put in force throughout the whole of such county before the passing of this Act, and the cost of such station or strong room has been incurred out of or now remains wholly or in part chargeable on the police rate for such police district or division, the justices may transfer the charge from the police rates of such district to the county rate. 19 & 20 Vict. c. 69, s. 22.

*Their exemption from toll.*] No toll shall be demanded or taken on any turnpike road or bridge, for any horse, or police van, carriage, or cart passing along such road or bridge, in the service of the police established under the provisions of stat. 2 & 3 Vict. c. 93; provided that the constable in charge of such horse, van, carriage, or cart, if not the chief constable, shall produce an order in writing under the hand of the chief constable, or shall have his dress according to the regulations of the police force at the time of claiming the exemption; and every person who shall fraudulently claim or take the benefit of the exemption from toll herein contained, not being lawfully entitled thereunto, shall for every such offence be liable to a penalty not more than 5*l*.; and in all such cases the

proof of exemption shall be upon the person claiming the same. 3 & 4 Vict. c. 88, s. 1.

*Their powers and duties.*] The chief constable and other person so appointed shall be sworn as constables before a justice of the county, and shall have all the powers, privileges, and duties throughout the county, and also in all liberties and franchises, and detached parts of other counties locally situated within such county, and also in any county adjoining to their county, which any constable duly appointed has within his constableness by virtue of the common law, or of any statute made or to be made; and every provision of stat. 1 & 2 Will. 4, c. 41, as to special constables shall be deemed to extend to the constables appointed under this Act, except as to the manner of their appointment and dismissal, the time for which they shall serve, and the manner in which their allowances shall be paid, or as to any matter herein expressly otherwise provided. 2 & 3 Vict. c. 93, s. 8. Any other duties will be specified in such rules as the secretary of state may make under the 3rd section of that Act. 22 & 23 Vict. c. 32, s. 26. The chief constable of any county police force and the watch committee of any city, borough, district, or place, may suspend any constable within their respective jurisdictions, if remiss, or negligent, or unfit, and may fine such constable a sum not exceeding one week's pay, and reduce him to inferior rank. *Id.* s. 26.

Also, the constables of every county appointed under the said Acts of the second and third and third and fourth years of Her Majesty or either of them, or this Act, shall have, in every borough situate wholly or in part within such county, or within any county or part of a county in which they have authority, all such powers and privileges and be liable to all such duties and responsibilities as the constables appointed for such borough have and are liable to within any such county, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within any such borough in which they shall be called on to act as constables, for conducting themselves in the execution of their office. 19 & 20 Vict. c. 69, s. 6. But county constables are not required to act in any borough having a separate police establishment. 22 & 23 Vict. c. 32, s. 2.

And the constables acting under the said Acts of the second and third and third and fourth years of Her Majesty, the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts, shall, in addition to their ordinary duties, perform all such duties connected with the police in their

respective counties or boroughs as the justices in general or quarter sessions assembled, or the watch committees of such respective counties or boroughs, from time to time direct or require. 19 & 20 Vict. c. 69, s. 7. Thus the justices of any county may direct a sufficient number of the county constables to keep order in the courts of assize, in which case the high sheriff need not provide and maintain any javelin men or men servants in liveries there. 22 & 23 Vict. c. 32, s. 18.

County constables while in office are not allowed to vote in elections to any municipal office, or to interfere, under a penalty of 10*l.* *Id.* s. 3.

*Neglect of duty.*] Every constable appointed under this Act, who shall be guilty of any neglect or violation of duty in his office of constable, and shall be convicted thereof before any two justices of the peace for the county, shall be liable to a penalty not more than 10*l.*, the amount of which penalty may be deducted from any salary then due to such offender, or, in the discretion of the justices by whom he shall be convicted, may be imprisoned, with or without hard labour, for any time not more than one calendar month. 2 & 3 Vict. c. 93, s. 12.

*Publicans harbouring them.*] If any victualler, or keeper of any house, shop, room, or other place for the sale of any liquors, whether spirituous or otherwise, shall knowingly harbour, or entertain any constable belonging to the said force, or permit such constable to abide or remain in his house, shop, room, or other place, during any part of the time appointed for his being on duty, every such keeper or victualler as aforesaid, being convicted thereof before any two justices of the peace for the county, shall, for every such offence, forfeit and pay such sum, not exceeding 5*l.*, as they shall think meet. 2 & 3 Vict. c. 93, s. 16.

*Their dismissal.*] The chief constable, we have seen, may be dismissed by the justices in quarter sessions; 2 & 3 Vict. c. 93, s. 4, *ante*, p. 135; and the petty constables may be dismissed by the chief constable. *Id.* s. 6, *ante*, p. 136. And every constable who shall be dismissed from or shall cease to hold and exercise his office, and who shall not forthwith deliver all the clothing, accoutrements, appointments, and other necessities which may have been supplied to him for the execution of his duty to the chief constable or superintendent, or to such person and at such time and place as shall be directed by the said chief constable or superintendent, shall be liable, on being convicted thereof before any two justices of the



peace for the county, to imprisonment, with or without hard labour, for any time not exceeding one calendar month; and it shall be lawful for any justice of the peace to issue his warrant to search for and seize to the use of the county police all the clothing, accoutrements, appointments, and other necessaries which shall not be so delivered over, wherever the same may be found. 2 & 3 Vict. c. 93, s. 14.

*Their pay, fees, &c.*] The pay is regulated by the rules of the secretary of state before referred to, *ante*, p. 136. Also, in addition to the salary to be paid to the chief constable of the county, reasonable allowances shall be made to him for extraordinary expenses necessarily incurred by him, and by the constables under his orders in the apprehension of offenders, and in the execution of his and their duty under this Act; which allowances shall be examined and audited by the justices of the county in quarter session assembled. 2 & 3 Vict. c. 93, s. 18.

And the justices of the county in general or quarter session assembled shall, from time to time (subject to the approval of one of Her Majesty's principal secretaries of state), settle tables of fees and allowances for the service of summonses and execution of warrants, and for the performance of the other occasional duties which may be required of the county constables; and whenever any duty for which any such fee or allowance shall have been settled shall be performed by one of the constables appointed under stat. 2 & 3 Vict. c. 93, the amount thereof shall be accounted for and paid to the treasurer of the county, or such other person as shall be appointed by the justices to receive the same, and shall be applied towards defraying the expenses of putting the said Act in execution; and when such duty shall have been performed by one of the county constables, the amount of the fee or allowance shall be paid to such constable, under such regulations as shall be made from time to time by the justices in general or quarter session assembled. 3 & 4 Vict. c. 88, s. 17; 22 & 23 Vict. c. 32, s. 28.

Also, by stat. 19 & 20 Vict. c. 69, s. 8, it shall not be lawful for any constable acting under the said Acts of the second and third and third and fourth years of Her Majesty, and the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts, to receive to his own use any fee for the performance of any act done by him in the execution of his duty as such constable. But, by sect. 12, it shall be lawful for the magistrates in general or quarter sessions assembled, if they so think fit, to grant gratuities to such officers as may be removed from their appointments in consequence of the duties of such officers being transferred to persons be-

longing to the police establishment. And the justices of the county and the watch committee of a borough may, on the recommendation of the chief or head constable, grant a gratuity out of the superannuation fund of the county or borough to the widow of a constable who has died in the service, such sum not to exceed a year's pay. 22 & 23 Vict. c. 32, s. 20. And a gratuity may be granted out of the police rate or borough fund, not exceeding 8*l.*, for meritorious conduct. *Id.* s. 24.

And the justices usually acting in and for every division, shall take care that full, true, and particular accounts be kept of all fees and allowances within their division, and shall once in every quarter of a year cause an account, with all proper vouchers for verifying the same, to be delivered to the treasurer of the county or other person appointed to receive the same. 3 & 4 Vict. c. 88, s. 18.

Any constable or officer promoted from one force to another, either of a county or borough, who shall have served in his last force for a period of seven years, shall, for purposes of superannuation, reckon as service in the new force half of the service in the old, provided the promotion is made on the recommendation of the chief or head constable. 22 & 23 Vict. c. 32, s. 19.

*Superannuation fund.*] There shall be deducted from the pay of every constable belonging to the police force established in any county under stat. 2 & 3 Vict. c. 93, a sum after such yearly rate as the justices of the county in general or quarter session assembled shall direct, not being a greater sum than 2*l.* 10*s.* in 100*l.*, which sum so deducted, and also the monies accruing from stoppages from any of the said constables during sickness, and fines imposed on any of the said constables for misconduct, and from any portion of the fines imposed by any justice of the peace upon drunken persons, or for assaults upon police constables, and from moiety of fines and penalties awarded to informers (being police constables) on summary convictions, as shall be directed by such justice to be paid for the benefit of this fund, and all monies arising from the sale of worn or cast clothing supplied for the use of the constables in any county, shall from time to time be invested in such manner as the justices in general or quarter session assembled shall direct; and the interest and dividends thereof, or so much of the same as shall not be required for the purposes hereinafter mentioned, shall be likewise invested in the like manner, and accumulated so as to form a superannuation fund, and shall be applied from time to time for payment of such superannuation or retiring allowances or gratuities as may be ordered by the justices in general or quarter sessions as-

sembled, upon the recommendation of the chief constable, at any time, to any of the said constables, as hereinafter provided; and the justices shall guarantee the security of the superannuation fund of their county, and make good out of the county stock any deficiency which may arise in such fund from the default of any treasurer or other person intrusted with the custody or management thereof. 3 & 4 Vict. c. 88, s. 10. A like provision is applicable to borough constables, established under 5 & 6 Will. 4, c. 76. 22 & 23 Vict. c. 82, s. 8.

The justices, upon such recommendation, if they shall think fit, may order that any of the said constables may be superannuated, and receive thereupon out of the superannuation fund a yearly allowance, subject to the following conditions, and not exceeding the following proportions; (that is to say,) that if he shall have served with diligence and fidelity for fifteen years and less than twenty years, an annual sum not more than half his pay; if for twenty years or upwards an annual sum of not more than two-thirds of his pay; provided that if he shall be under sixty years of age it shall not be lawful to grant any such allowance unless upon the certificate of the chief constable that he is incapable, from infirmity of mind or body, to discharge the duties of his office; provided also, that if any constable shall be disabled from any wound or injury received in the actual execution of the duty of his office, it shall be lawful to grant him any allowance not more than the whole of his pay; but nothing herein contained shall be construed to entitle any constable absolutely to any superannuation allowance, or prevent him being dismissed without superannuation allowance. 3 & 4 Vict. c. 88, s. 11. The same provision is made as to borough police. 22 & 23 Vict. c. 82, s. 9.

By stat. 19 & 20 Vict. c. 69, s. 10, it shall be lawful for the justices of any county in general or quarter sessions assembled, if they think fit, upon the recommendation of the chief constable, and upon his certifying that any constable belonging to the police force of the county, who has not served so long as fifteen years, is incapable, from infirmity of mind or body, to discharge the duties of his office, to order that such constable shall receive out of the superannuation fund mentioned in the said Act of the third and fourth years of Her Majesty such sum in gross as a gratuity upon his retirement as to the said justices may seem proper. So as to borough constables. 22 & 23 Vict. c. 82, s. 10.

And by sect. 11, if at any time the superannuation fund mentioned in stat. 3 & 4 Vict. c. 88, be insufficient (otherwise than by reason of any default of any treasurer or other person entrusted with the custody or management thereof) to pay the superannuation or retiring allowances and gratuities

payable thereout, the amount which such fund shall from time to time be insufficient to pay shall be defrayed by the police rate, and, where the county is divided into police districts, shall be defrayed by the several districts as parts of the local expenditure thereof, rateably in proportion to the number of constables appointed for each such district respectively. *Id.* s. 11.

*Superannuations to chief constables.*] It shall be lawful for the justices of any county in general or quarter sessions assembled, if they see fit, to grant to any chief constable of the county, on his ceasing to be such chief constable, such annual sum, by way of superannuation allowance, as they think fit; and such superannuation allowance shall be paid out of the police rate of the county, and shall, in the case of a county which is divided into police districts, be deemed part of the general expenditure, and be defrayed accordingly: provided always, that no such allowance shall be granted to any chief constable under sixty years of age, unless the said justices be satisfied that he is incapable, from infirmity of mind or body, to discharge the duties of his office; and section eleven of the said secondly recited Act, as to the proportionate amount of the superannuation allowance of any petty constable, shall apply to the superannuation allowance to be granted to any chief constable. 19 & 20 Vict. c. 69, s. 13.

*Private constables.*] The chief constable of any county, with the approval of the justices of the county in general or quarter session assembled (if he shall think fit), on the application of any person or persons showing the necessity thereof, may appoint and cause to be sworn in any additional number of constables, at any place within the limits of his authority, at the charge of the person or persons by whom the application shall be made, but subject to the orders of the chief constable, and for such time as he shall think fit; and every such constable shall have all the powers, privileges, and duties of other county constables: provided always, that it shall be lawful for the person or persons on whose application such appointment shall have been made, upon giving one calendar month's notice in writing to the chief constable, to require that the constable so appointed shall be discontinued, and thereupon the chief constable shall discontinue such additional constables. 3 & 4 Vict. c. 88, s. 19.

*Inspectors.*] By stat. 19 & 20 Vict. c. 69, s. 15, it shall be lawful for Her Majesty, by warrant under her royal sign manual, to appoint during Her Majesty's pleasure three persons as inspectors under this Act, to visit and inquire into the

state and the efficiency of the police appointed for every county and borough, and whether the provisions of the Acts under which such police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge rooms, cells, or lock-ups, or other premises occupied for the use of such police; and each of the inspectors so appointed shall report generally upon such matters to one of Her Majesty's principal secretaries of state, who shall cause such reports to be laid before parliament; and such inspectors shall be paid, out of such money as may be provided by parliament for the purpose, such salaries and allowances as shall be determined by the commissioners of Her Majesty's treasury.

*Returns.*] Also by stat. 19 & 20 Vict. c. 69, s. 13, the justices of every county and the watch committee of every borough shall, in the month of October in every year, make returns to the home secretary of the state of the police force. *Id.* s. 14.

*Expenses.*] By stat. 19 & 20 Vict. c. 69, s. 16, upon the certificate of one of Her Majesty's principal secretaries of state, it shall be lawful for the commissioners of Her Majesty's treasury to pay one-fourth of the charge for their pay and clothing, except as to private constables.

But no such sum as aforesaid shall be paid towards the pay and clothing of the police of any borough, not being consolidated with the police of a county under the said Act of the third and fourth years of Her Majesty, or this Act, the population of which borough, according to the last parliamentary enumeration for the time being, does not exceed 5,000. *Id.* s. 17.

The stat. 19 & 20 Vict. c. 69, contains some sections (ss. 25 to 29) applicable only to the county of Chester, to which the reader, if necessary, is referred.

## 4. BOROUGH AND COUNTY CONSTABLES CONSOLIDATED.

By stat. 3 & 4 Vict. c. 88, s. 14, it shall be lawful for the justices of any county in which constables shall have been appointed under stat. 2 & 3 Vict. c. 93, and for the council of any incorporated borough situated in or adjoining to such county, to agree together for the consolidation of the county and borough police establishments: and in every such case all the constables appointed either for the county or the borough shall have all the powers, privileges, and duties throughout the county and the borough, which constables appointed for any county have within that county under the said Act, and all the provisions of the said Act shall be taken to apply to the borough constables as well as to the county constables, as is herein otherwise provided.

And no agreement made as aforesaid shall be put an end to without the sanction of one of Her Majesty's principal secretaries of state. 19 & 20 Vict. c. 69, s. 20.

And in all cases where the establishment of county and borough constables shall be consolidated into one police establishment, the chief constable of the county shall have the general disposition and government of all such constables, subject to the provisions hereinafter contained, and at his pleasure may dismiss all or any of them; and whenever the chief constable shall dismiss one of the borough constables he shall report the fact, with his reasons for the dismissal, to the mayor of the borough, and the watch committee of the borough shall forthwith appoint another constable properly qualified, unless provision shall be made in such agreement that all constables shall be appointed by the chief constable; and no borough constable who shall have been dismissed by the chief constable, shall be capable of being re-appointed for the same borough, without the consent of the chief constable: and so much of the Act for regulating corporations [5 & 6 Will. 4, c. 76, see *ante*, p. 132] as empowers the said committee, or any two justices of the peace having jurisdiction within the borough, to dismiss any constable, shall be suspended as to those boroughs whose establishment of constables is consolidated with the establishment of county constables, during the time that any agreement for such consolidation shall be in force. 3 & 4 Vict. c. 88, s. 15.

Also, by stat. 19 & 20 Vict. c. 69, s. 5, if the council of a borough apply to the county to agree to a consolidation, which is not done, the privy council may fix the terms of consolidation.

## 5. CONSTABLES ON CANALS AND NAVIGABLE RIVERS.

*Their appointment*, 146.*How and by whom paid*, 146.*Their power and duties*, 146.*Neglect of duty*, 147.*Their dismissal*, 147.*Assaulting them*, 148.*Actions against them*, 148.

*Their appointment.*] Any two justices of the peace, and the watch committee of any incorporated borough, within their several jurisdictions, on the application of the committee or board of directors acting in the management of the affairs of the company of proprietors of any canal or navigable river, or of any clerk or agent of any such company, duly authorized by such committee or board of directors, may appoint so many persons as they shall think fit from among those who shall be recommended to them for that purpose by such company of proprietors, clerk, or agent, to act as constables on and along such canal or river.

An oath or declaration is to be administered by any one such justice. 3 & 4 Vict. c. 50, ss. 1, 20.

*How and by whom paid.*] Every such company of proprietors may pay to every such constable, out of the monies and effects of the company, such salary or allowances, and at such times and in such manner, as the company shall think fit. 3 & 4 Vict. c. 50, s. 3.

*Their power and duties.*] Every person so appointed, and having taken such oath or made such declaration as aforesaid, shall have full power to act as constable: provided always, that such power shall not extend to authorize any such person to act as such constable within the metropolitan police district, or the city of London and the liberties thereof, or in any places beyond the banks, towing paths, and other the premises belonging to such company, as may be situate within any other city or any incorporated borough. 3 & 4 Vict. c. 50, s. 1. Every constable appointed as aforesaid having just cause to suspect that any felony, or any other offence contrary to the provisions of this Act, has been or is about to be committed in or on board of any boat or other vessel lying in any such canal or river, or any lock or dock thereunto belonging, is empowered to enter at all times, as well by night as by day, into and upon every such boat or other vessel, and therein to take all necessary measures for the prevention or detection of all felonies or other offences which he has just cause to suspect to have been or to be about to be committed,

and to take into custody all persons suspected of being concerned in such felonies or other offences, and also to take charge of all property so suspected to be stolen or embezzled. 3 & 4 Vict. c. 50, s. 9. Also, such constable may take into custody, without a warrant, any loose, idle, and disorderly person whom he shall find disturbing the public peace,—or whom he shall have good cause to suspect of having committed or being about to commit any felony, misdemeanor, or breach of the peace, or other offence contrary to the provisions of this Act,—and every person whom he shall find, between sunset and the hour of eight in the morning, lying or loitering in or upon any towing-path, or in or upon any wharf, bridge, railway, quay, landing-place, lock, dock, or upon the bank of any such canal or river, and not giving a satisfactory account of himself. 3 & 4 Vict. c. 50, s. 10. And any person found committing any offence punishable upon summary conviction by virtue of this Act, may be taken into custody, without warrant, by any constable, or may be apprehended by the owner of the property with respect to which the offence shall be committed, or by his servant, or any person authorized by him, and may be detained until he can be delivered into the custody of a constable to be dealt with according to law; and every such constable may also stop, search, and detain any vessel, boat, cart, or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained. 3 & 4 Vict. c. 50, s. 11.

*Neglect of duty.*] And every constable who shall be guilty of any neglect or breach of duty, in his office of constable, shall be liable to a penalty not more than 10*l.*, the amount of which penalty may be deducted from any salary due to such offender, or, in the discretion of the magistrate before whom such offender shall have been convicted, such offender may be imprisoned in the gaol or house of correction for the county or place in which such offence shall have been committed, with or without hard labour, for any time not more than one calendar month. 3 & 4 Vict. c. 50, s. 4.

*Their dismissal.*] Any two justices, or the watch committee of any incorporated borough, may dismiss such constable, and the company of proprietors of any such canal or river for which any constable shall be appointed, or any clerk or agent of such company duly authorized by the committee or board of directors of such companies, may also dismiss such constable. 3 & 4 Vict. c. 50, s. 2.

And every constable when dismissed shall deliver over all



the clothing, accoutrements, appointments, and all other necessities supplied to him for the execution of his duty. 3 & 4 Vict. c. 50, s. 5.

*Assaulting them.]* Every person who shall assault or resist any constable appointed as aforesaid in the execution of his duty, or who shall aid or incite any person so to assault or resist, shall for every such offence be liable to a penalty not more than 10*l.*, or, in the discretion of the magistrate before whom he shall be convicted, may be imprisoned in any gaol or house of correction as aforesaid, with or without hard labour, for any time not more than two calendar months. 3 & 4 Vict. c. 50, s. 6.

*Actions against them.]* All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act, shall be laid and tried in the county where the fact was committed,—and shall be commenced within six calendar months after the fact committed, and not otherwise. 3 & 4 Vict. c. 50, s. 18.

## 6. SPECIAL CONSTABLES.

<i>In what cases and how appointed,</i> 149.	<i>Their allowance and expenses,</i> 151.
<i>Refusal to be sworn or to serve,</i> 150.	<i>Assaulting or resisting them,</i> 151.
<i>Where and how they may act,</i> 150.	<i>Special constables in boroughs,</i> 151.
<i>Service determined,</i> 150.	

*In what cases and how appointed.*] In all cases where it shall be made to appear to any two or more justices of the peace of any county, riding, or division having a separate commission of the peace, or to any two or more justices of the peace of any liberty, franchise, city, or town in England or Wales, upon the oath of any credible witness, that any tumult, riot, or felony has taken place or may be reasonably apprehended in any parish, township, or place situate within the division or limits for which the said respective justices usually act, and such justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants and the security of the property in any such parish, township, or place as aforesaid, then and in every such case such justices, or any two or more justices acting for the same division or limits, are hereby authorized to nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of constable—see *ante*, p. 120,) residing in such parish, township, or place as aforesaid, or in the neighbourhood thereof, to act as special constables, for such time and in such manner as to the said justices respectively shall seem fit and necessary for the preservation of the public peace, and for the protection of the inhabitants, and the security of the property in such parish, township, or place; and the justices of the peace who shall appoint any special constables, by virtue of this Act, or any one of them, or any other justice of the peace acting for the same division or limits, are and is hereby authorized to administer to every person so appointed the following oath; (that is to say,)

*I, A. B., do swear, that I will well and truly serve our sovereign [Lady the Queen] in the office of special constable for the parish [or township] of —, without favour or affection, malice or ill-will; and that I will to the best of my*

*power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law.*

*So help me God.*

Provided always, that whenever it shall be deemed necessary to nominate and appoint such special constables as aforesaid, notice of such nomination and appointment, and of the circumstances which have rendered such nomination and appointment expedient, shall be forthwith transmitted by the justices making such nomination and appointment to one of Her Majesty's principal secretaries of state, and to the lieutenant of the county. 1 & 2 Will. 4, c. 41, s. 1.

The home secretary may also in certain cases order persons in the parish who are exempt to be sworn in as special constables, and act for two months. *Id.* s. 2. And so as to persons in the county for three months. *Id.* s. 4.

*Refusal to be sworn or to serve.]* And if any person, being appointed a special constable, shall refuse to take the oath, he shall be liable to be convicted thereof forthwith before the said justices so requiring him, and to forfeit and pay such sum of money, not exceeding '5l., as to the said justices so requiring him shall seem meet. 1 & 2 Will. 4, c. 41, s. 7. And if such person being appointed a special constable neglect or refuse to appear at the time and place for taking the oath, he shall incur a like penalty; and so if he refuse to obey orders. *Id.* ss. 7, 8.

*Where and how they may act.]* Every special constable appointed under this Act shall, not only within the parish, township, or place for which he shall have been appointed, but also throughout the entire jurisdiction of the justices so appointing him, have, exercise, and enjoy all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities, as any constable duly appointed now has within his constablewick by virtue of the common law of this realm, or of any statute or statutes. 1 & 2 Will. 4, c. 41, s. 5. As to the duties of constables generally, see *post*, p. 153. The justices of the peace who shall have appointed any special constables, shall have power to make orders and regulations for such special constables, and shall also have power to remove any such special constable; and may also order such constables to act in an adjoining county. *Id.* s. 6. 1 & 2 Will. 4, c. 41, s. 4.

*Service determined.]* The justices who shall have appointed

any special constables, or the justices acting for the division or limits within which such special constables shall have been called out, are empowered to suspend or determine the services of any or of all the special constables so called out. 1 & 2 Will. 4, c. 41, s. 9. Special constables, once appointed, continue to have all the authority of constables until their services are actually determined by the justices under this section. *E. v. Porter et al.*, 9 Car. & P. 778.

Every special constable, within one week after the expiration of his office, must deliver over every staff, weapon, and other article provided for such special constable. 1 & 2 Will. 4, c. 41, s. 10.

*Their allowance and expenses.*] The justices of the peace acting for the division or limits within which any such special constables shall have been called out to serve, are empowered to order reasonable allowances for their trouble, loss of time, and expenses, to be paid to such special constables by the treasurer of such county, riding, or division. 1 & 2 Will. 4, c. 41, s. 18. Or if it be made to appear to any two or more justices of the county, &c., on the oath of three or more credible witnesses, that the appointment of such special constables has been occasioned "by the behaviour, or by reasonable apprehension of the behaviour, of the persons employed upon any railway, canal, or other public work, made or carried on under the authority of parliament, within the district or division for which such justices usually act," the justices, at any time not exceeding one month after such appointment, may make orders from time to time upon the treasurer or other officer who shall have the control or custody of the funds of the company making the railroad, &c., for payment of such reasonable allowances to such special constables (not exceeding 5s. a day each), for their trouble, loss of time, and expenses, as to the justices shall seem proper; a copy of which order shall be sent by the justices to one of the principal secretaries of state, and if allowed by him it shall be binding on the company, &c. 1 & 2 Vict. c. 80, s. 1. The secretary of state, however, may disallow the order altogether, or in part, in which case the expenses shall be paid or made up out of the rate for the county, &c. *Id.* s. 2. The amount ordered and allowed two justices may cause to be levied by distress upon the goods and chattels belonging to the company. 1 & 2 Vict. c. 80, s. 3.

*Assaulting or resisting them.*] If any person shall assault or resist any special constable, such person shall forfeit any sum not exceeding 20l. 1 & 2 Will. 4, c. 41, s. 11.

*Special constables in boroughs.*] Any two or more of the

justices of the peace, having jurisdiction within any borough, are hereby authorized and required, in the month of October in every year, to nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the inhabitants of such borough (not legally exempt from serving the office of constable), to act as special constables within such borough whensoever they shall be required; and every person so appointed a special constable shall take the oath set forth in stat. 1 & 2 Will. 4, c. 41, (*ante*, p. 149,) and shall have the powers and immunities and be liable to the duties and penalties enacted by the said last-mentioned Act; and every person so appointed a special constable shall receive, out of the borough fund, for every day during which he shall be called out to act as such, the sum of 3*s.* 6*d.*, and no more. 5 & 6 Will. 4, c. 76, s. 83. This, however, does not operate as a repeal of stat. 1 & 2 Will. 4, c. 41, with respect to boroughs; but the justices of a borough may still, when it becomes necessary, appoint special constables under stat. 1 & 2 Will. 4, c. 41, in the same manner as justices in counties. *R. v. Hulton*, 19 Law J. 32, *m.*

7. DUTIES OF CONSTABLES.

- As to ale-houses and beer-houses*, 154.
- Apprehending offenders without warrant*, 155;—*in the act of committing the offence*, 155, *in case of riots*, 156, *as to hawkers*, 157, *and vagrants*, 157;—*after the offence committed*, 158;—*in prevention of offences*, 159; *on hue and cry*, 160;—*when and where*, 160, *how*, 160.
- Apprehension of an offender under a warrant*, 161; *warrant, in what cases and how*, 161; *or summons and warrant*, 161;—*warrant, how and where executed*, 162.
- Betting-houses*, 163.
- Confession*, 163.
- Coroner's jury, summoning*, 164.
- County rate*, 164.
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- Lunatics found wandering at large*, 165.
- Military*, 166;—*billeting troops on service*, 166; *billeting the guards*, 166; *offences with respect to billeting*, 167.
- Militia*, 167.
- Prosecuting disorderly houses, gaming-houses, &c.*, 168.
- Arresting poachers*, 169.
- Search warrant*, 169.
- Summons, service of*, 170.
- Warrant to apprehend, on an information or complaint*, 170.
- Warrant of distress upon a conviction, &c.*, 171; *how executed*, 171; *in what cases backed*, 171; *how returned*, 172.
- Warrant of commitment on a conviction or order*, 172.

By stat. 5 & 6 Vict. c. 109 (under which petty constables are appointed, as mentioned, *ante*, p. 121), it is enacted by sect. 15, that the said constables shall have within the whole county, and also within all liberties and franchises, and detached parts of other counties situated therein, and also in every county adjoining to the county in which they are appointed, all the powers, privileges, and immunities, and shall be liable to all the duties and responsibilities, of a constable within his constablewick, but shall not be bound to act as a constable beyond the parish for which they are severally appointed and sworn, without the special warrant of a justice of the peace; provided that in those counties in which any chief constable or superintendent shall have been appointed under the authority of the 3 & 4 Vict. c. 88, the constables appointed under 5 & 6 Vict. c. 109, for any parish within the district for which such chief constable or superintendent shall have been appointed, shall be subject to the authority of such chief constable or superintendent. 5 & 6 Vict. c. 109, s. 15.

*As to Ale-houses, Beer-houses, &c.*

By stat. 9 Geo. 4, c. 61, s. 2, after providing that a petty session shall be holden in each division, for appointing a day and place for holding the annual licensing meeting, it is enacted that the justices shall direct a precept to the high constable of the division or place for which such meeting is to be holden, requiring him, within five days next ensuing that on which he shall have received such precept, to order the several petty constables or other peace officers within his constablewick to affix or cause to be affixed on the door of the church or chapel, and where there shall be no church or chapel, on some other public and conspicuous place within their respective districts, a notice of the day, hour, and place at which such meeting is appointed to be holden, and to give to or to leave at the dwelling-house of each and every justice acting for such division or place, and of each and every person keeping an inn, or who shall have given notice of his intention to keep an inn, and to apply for a licence to sell exciseable liquors by retail, to be drunk or consumed on the premises, within their respective districts, a copy of such notice. 9 Geo. 4, c. 61, s. 2.

And by stat. 4 & 5 Will. 4, c. 85, s. 7, all constables and officers of police are authorized and empowered to enter into all houses which are or shall be licensed to sell beer or spirituous liquors, to be consumed upon the premises, when and so often as such constables and officers shall think proper; and if any person having such licence aforesaid, or any servant or other person in his employ or by his directions, shall refuse to admit or shall not admit such constable or officer of police into such house or upon such premises, such person having such licence shall for the first offence forfeit and pay any sum not exceeding 5*l.*, together with the costs of the conviction, to be recovered within twenty days next after that on which such offence was committed, before one or more justices of the peace; and it shall be lawful for any two or more justices, before whom any such person shall be convicted of such offence for the second time, to adjudge (if they shall so think fit) that such offender shall be disqualified from selling beer, ale, porter, cider, or perry, by retail for the space of two years next after such conviction, or for such shorter space of time as they may think proper. 4 & 5 Will. 4, c. 85, s. 7. For the second offence the keeper of the house can only be disqualified, and is not liable to a fine also. *R. v. Tott*, 30 L. J. 268, Q. B. Similar powers are given to constables to enter into refreshment houses. 23 Vict. c. 27, s. 18.

Where the keeper of an inn, ale-house or victualling-house, and duly licensed to sell exciseable liquors by retail, has already been convicted of two offences against his licence, and is charged with having subsequently committed a third offence against it,—it is provided by stat. 9 Geo. 4, c. 61, s. 22, that it shall be lawful for such justices to order that the constable or other peace officer of the parish or place in which shall be situate the house kept by the person so charged, shall carry on all proceedings necessary to obtain such adjudication as aforesaid, and to bind such constable or other peace officer in a sufficient recognizance so to do; and the justices may order the treasurer of the county to pay such constable or other peace officer the expenses.

*Apprehending Offenders without Warrant.*

*In the act of committing the offence.]* All constables,—indeed every person,—private individuals as well as constables,—present when a felony is committed or a dangerous wound given, not only may apprehend the offender, but they are bound to do so. 2 *Hawk.* c. 12, s. 1; 1 *East*, P. C. 377, s. 1. If a private person be present at an affray, he may stay the affrayers until the heat is over, and then deliver them over to the constable, and he may stop others coming to join either party; 2 *Hawk.* c. 13, s. 8; and a constable, of course, may act in like manner, and may keep any of the affrayers in safe custody until he can bring them before a justice of the peace. But after the affray is ended, the parties cannot be arrested without warrant. 2 *Hawk.* c. 13, s. 8; *Id.* c. 12, s. 20; 2 *Inst.* 52. And where an assault was committed in the presence of a constable, it was holden that a private person present at the time might lawfully give the offender in charge to the constable. *Derecourt v. Corbishley*, 24 Law J. 313, Q. B. The assault, however, must be one which would justify a criminal charge. *Coward v. Baddeley*, 4 H. & N. 478. So the constable may immediately after seeing the assault, and before danger of further violence has ceased, make the arrest, and any one resisting him may be convicted of assaulting him in the execution of his duty. *R. v. Light*, 7 Cox, c. 380.

In all cases of offences against the Larceny Act, 24 & 25 Vict. c. 96, it is enacted, that any person found committing any offence punishable, either upon indictment or upon summary conviction, by virtue of that Act (except only the offence of angling in the daytime), may be immediately apprehended, without a warrant, by any peace officer, or by any owner of the property on or with respect to which the offence shall be committed,—or by his servant,—or by any



person authorized by him,—and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law. 24 & 25 Vict. c. 96, s. 103.

So in all offences against the Malicious Injuries Act, 24 & 25 Vict. c. 97, persons found offending may be apprehended in like manner. *Id.* s. 61. In these cases, and in cases within ch. 96 above mentioned, the offender must be taken, either in the act of committing the offence or on fresh pursuit; *Hanway v. Boulbee*, 1 Moody & R. 15; *R. v. Curran*, 3 Car. & P. 397; but not on his return after committing the offence. *R. v. Phelps et al.*, Car. & M. 180.

Persons found loitering at night may be apprehended by a constable if suspected of having committed or being about to commit a felony, (24 & 25 Vict. c. 100, s. 66; 24 & 25 Vict. c. 96, s. 104; 24 & 25 Vict. c. 97, s. 57,) or if found committing any indictable offence. 14 & 15 Vict. c. 19.

*In case of riots.*] A constable, or even private person, may lawfully endeavour to prevent those whom he sees engaged in a riot or rout, from executing their purpose, and he may stop those whom he shall see coming to join them, (1 *Hawk.* c. 65, s. 11,) and may arrest those he sees engaged in it. And for this purpose, he may lawfully arm himself, and make use of his arms in suppressing the riot.

And what may thus be done by a constable or private person, may also be done by the military, even although they be not at the time acting under the orders of a justice of the peace. But they must be cautious not to use their arms in such a case, where there is no actual necessity, except indeed in their own defence in case they should be attacked.

Constables and other peace officers also, not only may do, but it is one of the duties of their office to do, all that in them lies, for the suppressing of the riot [and the arrest of the rioters]; and they may command all other persons to assist them in doing so. 1 *Hawk.* c. 65, s. 11.

As to rioters remaining together after the Riot Act, or rather proclamation to disperse, has been read, and which is made a felony by stat. 1 Geo. 1, st. 2, c. 5, s. 1, it is enacted by sect. 3 of that statute, that if such persons, so unlawfully, riotously, and tumultuously assembled, or twelve or more of them, after proclamation made in manner aforesaid, shall continue together and not disperse themselves within one hour, then it shall and may be lawful to and for every justice of the peace, sheriff, or under-sheriff of the county where such assembly shall be,—and also to and for every high and petty constable and other peace officer within such county,—and also to and for every mayor, justice of the peace, sheriff, bailiff, and other head officer, high or petty constable and other peace

officer of any city or town corporate, where such assembly shall be,—and to and for such other person and persons as shall be commanded to be assisting unto any such justice of the peace, sheriff, &c. (who are hereby authorized and empowered to command all His Majesty's subjects of age and ability to be assisting to them therein), to seize and apprehend, and they are hereby required to seize and apprehend, such persons so unlawfully, riotously, and tumultuously continuing together after proclamation made as aforesaid, and forthwith to carry the persons so apprehended before one or more of His Majesty's justices of the peace of the county or place where such person shall be so apprehended, in order to their being proceeded against for such their offences according to law. 1 Geo. 1, st. 2, c. 5, s. 3.

*As to hawkers.*] By stat. 50 Geo. 3, c. 4, s. 20, any person whatsoever may seize and detain any hawker, pedlar, petty chapman, or other trading person as aforesaid (who shall be found trading without a licence, contrary to the Act, or who being found trading shall refuse or neglect to produce to such person a licence according to the Act, after being required so to do), for a reasonable time, in order to give notice to a constable, headborough, tithingman, or other peace officer or officers, who are required to carry such person so seized (unless he shall in the meantime produce his licence), before some justice of the county or place where the offence shall be committed; which said justice of the peace is authorized to convict the offender so trading without a licence. 25 Vict. c. 22, s. 31. And if any constable, headborough, tithingman, or other officer or officers of the peace, shall refuse or neglect to assist in the execution of the Act, each and every such officer shall forfeit for each and every such offence the sum of 10*l.*, to be recovered and applied as hereinafter mentioned. 50 Geo. 3, c. 4, s. 21.

*As to vagrants.*] By stat. 5 Geo. 4, c. 83, s. 6, any person whatsoever may apprehend a person who shall be found offending against the Act, and forthwith take and convey him or her before some justice, or deliver him or her to any constable or other peace officer of the place where he or she shall have been apprehended, to be so taken and conveyed; and in case any constable or other peace officer shall refuse or wilfully neglect to take such offender into his custody, and to take and convey him or her before some justice, or shall not use his best endeavours to apprehend and convey before some justice, any person that he shall find offending against the Act, it shall be deemed a neglect of duty in such constable or other peace officer, and he shall, on conviction, be punished

in manner as is after stated. And any justice, upon oath being made before him that any person hath committed, or is suspected to have committed, any offence against the Act, may issue his warrant to apprehend and bring before him or some other justice of the peace the person so charged. *Id.* s. 7.

So any justice of the peace, upon information on oath before him made that any person described to be an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, is or is reasonably suspected to be harboured or concealed in any house kept or purporting to be kept for the reception, lodging, or entertainment of travellers, may, by warrant under his hand and seal, authorize any constable or other person or persons to enter at any time into such house, and to apprehend and bring before him or any other justice every such idle and disorderly person, rogue and vagabond, and incorrigible rogue as shall be found therein. *Id.* s. 18.

And any constable, peace officer, or other person apprehending any person charged with being an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, may take any horse, mule, ass, cart, car, caravan, or other vehicle, or goods in the possession or use of such person, and convey the same as well as such person before some justice of the peace; and every justice by whom any person shall be adjudged to be an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, may order the offender to be searched, and any money found on him applied towards the expense of his apprehension. *Id.* s. 8.

And in case any constable or other peace officer shall neglect his duty in anything required of him by this Act, or in case any person shall disturb or hinder any constable or other peace officer in the execution of this Act, or shall be aiding, abetting, or assisting therein, and shall be thereof convicted upon the oath of one or more credible witness or witnesses before one or more justice or justices of the peace where such offence shall be committed, every such offender shall for every such offence forfeit any sum not exceeding 5*l.* *Id.* s. 11.

And in case any constable or other peace officer shall be convicted before any one or more justice or justices of the peace for any neglect of any duty required of him by this Act, or of any disobedience of any lawful warrant or order of any justice or justices, it shall be lawful for such justice or justices to reimburse and to allow to the person or persons on whose complaint or information such offender shall have been convicted, all necessary costs and expenses. *Id.* s. 12.

*After offence committed.]* If a reasonable charge of felony against a person be made to a constable, the constable will be

justified in arresting him without warrant, although it afterwards turn out that the person was perfectly innocent, or that no felony in fact had been committed. But there must be a reasonable charge and suspicion. *Hogg v. Ward*, 4 H. & N. 417. And a constable is not justified in apprehending a person as a receiver of stolen goods, on the mere assertion of the principal felon. *Isaac v. Brand*, 2 Stark. 167. Nor is a constable justified in taking a person into custody for a mere assault, without a warrant, unless he himself was present at the time the assault was committed, (*Cowpey v. Henley*, 2 Esp. 540,) or there be a reasonable ground for apprehending a continuance or renewal of it. *Price v. Seeley*, 10 Cl. & F. 28. *Baynes v. Brewster*, 11 Law J. 5, m. And where a police constable, being assaulted by a man, went away, and returned in about two hours with assistance, and arrested the man who assaulted him,—it was holden that the constable was not justified in arresting him, after that interval, without a warrant; *R. v. Walker*, 28 Law J. 123, m.; and the same as to all breaches of peace out of his view. 2 *Hawk.* c. 13, s. 8. *Id.* c. 12, s. 20.

Or if a constable have a reasonable suspicion that a man has committed felony, he may apprehend him. So may a private individual. The difference between the authority of the constable and the private person in this respect is, that the latter is justified only in case it turn out that a felony was in fact committed, but the constable may justify the arrest and detention, whether in fact a felony was committed or not. *Beckwith v. Philby*, *supra*, per Lord Tenterden, C. J. And the ordinary grounds of justifiable suspicion are thus enumerated by Hawkins:—First, the common fame of the country; second, living a vagrant, idle, disorderly life, without any visible means to support it; third, being in company with known offenders at the time the offence was committed, or at other times; fourth, being found under circumstances inducing a strong presumption of guilt, as, for instance, having stolen goods in his possession, and not being able to give an account of his having come honestly by them, or the like; fifth, behaving in such a way as to betray a consciousness of guilt, as by making no answer when charged with the offence, or absconding, or the like. 2 *Hawk.* c. 12, ss. 9—14. But a constable cannot arrest a man on mere suspicion of a misdemeanor. *Griffin v. Colman*, 28 Law J. 134, Exch.

*In prevention of offences.*] If a constable, or even a private person, see another on the point of committing treason or felony, or doing an act which would manifestly endanger the life of another, he may lay hold on him and detain him until it may be presumed that he has changed his purpose.

2 *Hawk.* c. 12, s. 19. There is one peculiarity in the constable's interference, namely, that he may demand the assistance of any person present to enable him to execute his duty; 2 *Hawk.* c. 13, s. 7, and see *R. v. Phelps et al.*, Car. & M. 180; and if such person refuse his assistance, he may be indicted and punished as for a misdemeanor at common law. See *R. v. Brown*, Car. & M. 314.

*On hue and cry.*] Upon hue and cry raised or levied, a private person may arrest the alleged offender, (2 *Hawk.* c. 12, s. 14,) although no other circumstance of suspicion attach to him. 2 *Inst.* 52. Hue and cry was the ancient mode of pursuing an offender from town to town until he was taken. 2 *Hawk.* c. 12, s. 5. It might be raised by any person present when a felony was committed, or dangerous wound given, by going to the constable of the next town, informing him of it, describing the offender, and stating which way he had gone. *Id.* ss. 4, 5. It was the duty of the constable then immediately to raise his own town, and search for the offender, and, upon not finding him, to send the like notice to the constables of all the neighbouring towns, who ought in like manner to search for the offender, and also to give notice to their neighbouring constables, and they to the next, until the offender was taken. *Id.* s. 6. Sometimes there was a justice's warrant for levying the hue and cry; but the constable might levy it without warrant. If a constable fail to levy a hue and cry when he ought, or if others do not pursue it when required, they are punishable upon indictment with fine or imprisonment, or both. 3 *Inst.* 117; 3 *Edw.* 1, c. 9.

*When and where.*] An arrest without warrant may be made at any time, even on a Sunday. And it may be made anywhere.

*How.*] An arrest is usually made by laying hands on the party and detaining him. But if the officer or other person say to him, "I arrest you," and the party acquiesce and go with him, this will be a good arrest; (see *Russen v. Lucas*, 1 Car. & P. 153;) although it would be otherwise if, instead of submitting, he had escaped. *Id.* If the arrest be by a constable, it is sufficient for him to state merely that he arrests the party in the Queen's name; 1 *Hale*, 589; but a private person, it should seem, if required, must state to the party arrested the cause of the arrest.

If the party to be arrested be in a house, and the doors be fastened, then according to *Hawkins*, the doors may be broken open to arrest him (after first demanding admittance and being refused), in the following cases:—First, upon a

*capias* on an indictment; second, where one, known to have committed treason or felony, or to have given another a dangerous wound, is pursued by a constable or private person, with or without warrant; third, where an affray is made in a house, in the view or hearing of a constable, or where affrayers fly to a house and are immediately pursued by a constable; fourth, where a person, lawfully arrested, escapes and flies to a house: in these several cases the door of the house may be broken open, to arrest the party or suppress the affray, if upon demand made for the purpose the parties within refuse to open it. 2 *Hawk.* c. 14, ss. 1-9. And the same upon a warrant on a charge or suspicion of felony. 2 *Hale*, 117. So, where a private person, without warrant, broke open the door of a house, and imprisoned the occupier, to prevent him from murdering his wife, he was holden to be justified. *Handcock v. Baker*, 2 Bos. & P. 260. And it is immaterial whether it be the party's own house, or the house of a stranger, except that in the latter case the officer is justified only in case the party he seeks be actually in the house at the time. 2 *Hale*, 117.

*Apprehension of an Offender under a Warrant.*

*Warrant, in what cases and how.*] Where a charge or complaint is made before a justice of the peace, that a person who has committed, or is suspected to have committed, any treason, felony, or indictable misdemeanor, or any other indictable offence whatsoever, either within the justice's jurisdiction or elsewhere, is residing or being, or is suspected to reside or be within the limits of such jurisdiction,—the justice may at once issue his warrant to apprehend such person, and to cause him to be brought before him or some other justice for the same county, riding, division, liberty, city, borough, or place, to answer to the charge. 11 & 12 Vict. c. 42, s. 1. This warrant may be issued on a Sunday as well as any other day. *Id.* s. 4. It must be under the hand and seal of the justice issuing it; and it may be directed—either to a constable or other person by name,—or generally to the constable of the parish or other district within which it is to be executed, without naming him,—or to such constable and all other constables or peace officers in the county or other district within which the justice issuing the warrant has jurisdiction,—or generally to all constables or peace officers within such county or district. *Id.* s. 10.

*Or summons and warrant.*] The justice, however, instead of issuing a warrant in the first instance, may, if he think fit,

issue a summons; and if that be disobeyed, he may then issue his warrant. 11 & 12 Vict. c. 42, s. 1, 9. In the case of a summons, it is not necessary that the information should be upon oath; it need not even be in writing. *Id.* s. 8. This summons must be served by a constable or other peace officer, either by delivering it to the party personally, or, if he cannot be conveniently met with, by leaving it with some person for him at his last or most usual place of abode. 11 & 12 Vict. c. 42, s. 9.

*Warrant, how and where executed.*] The arrest, as we have already seen, is usually made by actually laying hands on the party and detaining him. But if the officer or other person say to him "I arrest you," and the party acquiesce and go with him, this will be a good arrest (see *Russen v. Lucas*, 1 Car. & P. 158); although it would be otherwise, if, instead of submitting, he had escaped; *Id.*; and merely showing him the warrant, and his then voluntarily accompanying the officer to a magistrate, would not be in law an arrest. *Arrowsmith v. Le Mesurier*, 2 New Rep. 211. If the party arrested demand to see the warrant, the constable, if he be a known officer, and acting within his precinct, is not in strictness bound to show it to him; but otherwise, where the arrest is by a constable out of his precinct, or by a private person; 2 Hawk. c. 13, s. 28; and where the arrest is without warrant, it is sufficient for a constable to state merely that he arrests the party in the Queen's name; 1 Hale, 589; but a private person, if required, must, it should seem, state to the party the cause of the arrest. As to breaking open doors, for the purpose of making an arrest, see *ante*, p. 160; and as to the death of or injury to either party,—the party arresting or arrested,—in the endeavour to make or avoid the arrest, see *ante*, pp. 130, 131. If the person against whom the warrant has issued be in England or Wales, the constable, on taking the warrant to any justice of the peace there, and making oath as to the handwriting of the justices to the warrant, the justice to whom he shall present it will back the warrant, that is, he will indorse on it an authority for the constable and all other peace officers to execute the warrant within his jurisdiction. 11 & 12 Vict. c. 42, s. 11.

In like manner, English warrants may be backed in Ireland, (11 & 12 Vict. c. 42, s. 12,) or Scotland, (*Id.* s. 14,) or the Isle of Man, (*Id.* s. 13,) or the Islands of Guernsey, Jersey, Alderney, or Sark. *Id.* s. 13; and 14 & 15 Vict. c. 55, s. 18.

In the case of a search warrant, the warrant, after directing the constable to search for the goods in the dwelling-house, &c., of A. B., orders him that if the same or any part thereof, be found upon such search, to bring the goods so found, as

also the body of the said A. B. before the justice issuing the warrant, or some other justice or justices of the peace for the county, to be disposed of and dealt with according to law.

When the party is arrested, the constable should take him before a justice of the peace, as soon as it is possible for him to do so, (see *Wright v. Court*, 4 B. & C. 596,) and in the meantime he should keep or lodge him in safe custody. 2 *Hale*, 120. And the same, where the arrest is by a private person under a warrant. But if the arrest be by a private person without warrant, he may deliver the party to a constable, or he may take him before a justice of the peace. 1 *Hale*, 589. And the party arrested should not be treated with any unnecessary harshness, beyond what is actually necessary for his safe custody; and therefore it has been holden, that a constable has no right to handcuff a person whom he has apprehended on a suspicion of felony, unless he have attempted to escape, or it be necessary to prevent him from escaping. *Wright v. Court*, *supra*. Nor has a constable in general a right to search a person apprehended, unless the latter conduct himself violently. *Leigh v. Cole*, 6 Cox, C. C. 329.

#### *Betting House.*

Any justice of the peace, upon complaint made before him upon oath, that there is reason to suspect any house, office, room, or place to be kept or used as a betting-house or office, may give authority by special warrant, under his hand, when in his discretion he shall think fit, to any constable or police officer to enter, with such assistance as may be found necessary, into such house, &c., and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to arrest, search, and bring before a justice of the peace, all such persons found therein, and to seize all lists, cards, or other documents relating to racing or betting found in such house or premises. 16 & 17 Vict. c. 119, s. 11.

#### *Confession.*

A constable may receive a confession or admission of guilt from any person who will voluntarily make it, whether such person at the time be charged with the offence confessed or not. But he must take care not to obtain such confession or admission by any promise of favour or threat, or by any statement from which such promise or threat can be inferred; for



if so, it cannot afterwards be given in evidence against the party. As for instance, saying to him that he had better tell all he knew,—or that he had better tell where he got the property,—or “I will forgive you if you tell the truth,”—“You had better split, and not suffer for all of them,”—“it is of no use for you to deny it, for there are the man and boy who will swear that they saw you do it,”—“it would have been better if you had told at first,”—“that unfortunate watch has been found, and if you do not tell me who your partner was, I will commit you to prison as soon as we get to Newcastle:”—these have severally been holden to be such threats or promises as prevented the confessions made thereupon from being given in evidence. And the same, where the promise or threat is made by another person in the presence and hearing of a constable. *R. v. Lougher*, 2 Car. & K. 235. When a person indicates to a constable that he is about to confess, it is usual for the constable, before any disclosure is made, to apprise him that it will be his duty to communicate to the magistrate anything he may disclose to him; but this, although usual, is not necessary, and a confession by a person who is not thus cautioned, made to a constable or any other person, may afterwards be given in evidence against the party making it, provided it be voluntary, and not obtained by any threat or promise of favour as above mentioned; it is only on examination before a magistrate that such a caution is necessary.

#### *Coroner's Jury, Summoning.*

Before an inquest is holden on a dead body, the coroner issues his precept to the constable of the hundred or place where it was found, requiring him to summon “twenty-four good and lawful men of the four next townships.” Although the precept requires the constable to summon jurors of “the four next townships,” in practice he summons only householders in the immediate neighbourhood of the place where the inquest is to be holden; and he attends himself, and usually acts as an officer of the court.

#### *County Rate.*

When so directed by an order in writing, signed by the clerk of any committee of justices, appointed for preparing a basis for assessment of the parish or place to the county rate, the constable must make returns in writing to the committee, at such times and places as they may appoint, of the amount of

the full and fair value of the whole or any part of the property within the parish or place liable to be assessed toward the county rate, together with other particulars, (15 & 16 Vict. c. 81, s. 5,) failing in which, or to appear when required so to do before the committee of justices, or to be sworn or examined, he will be liable to a penalty of 20*l*.

*Distress for Rent.*

Before goods, distrained for rent, are sold, they must be appraised by two sworn appraisers, and an oath must be administered to them by the constable of the "hundred, parish, or place" where the distress was taken; the constable of an adjoining parish will not be sufficient, even although the constable of the proper parish cannot at the time be found. *Avenell v. Croker*, Moody & M. 172. The following is the form of the oath:—"You and each of you shall truly appraise the several goods and chattels mentioned in this inventory according to the best of your understanding. So help you God." The constable then writes a memorandum of this on the back of the inventory, in this form:—"Memorandum, that on the — day of —, in the year of our Lord —, C. D., of — and E. F., of —, two sworn appraisers, were sworn upon the Holy Evangelists, by me, G. H., constable of the parish of —, truly to appraise the goods and chattels mentioned in this inventory, according to the best of their understandings; as witness my hand, G. H., constable." Which memorandum is then attested by a witness present at the time, in this form:—"Present at the time of swearing the said C. D. and E. F. as above, and witness thereto," J. K.

*Lunatics found wandering at large.*

Every constable of any parish or place, and every relieving officer and overseer of any parish, who shall have knowledge that any person wandering at large within such parish or place (whether or not such person be a pauper) is deemed to be a lunatic, shall immediately apprehend and take, or cause such person to be apprehended and taken before a justice, under a penalty of 10*l*. 16 & 17 Vict. c. 97, ss. 68, 70. Or on its being made to appear to any justice, by the information, upon oath, of any person whomsoever, that any person wandering at large, within the limits of his jurisdiction, is deemed to be a lunatic, such justice may, by an order under his hand and seal, require any constable of the parish or place or relieving

officer or overseer of the parish where such person may be found, to apprehend him and bring him before such justice, or some other justice having jurisdiction where such person may be found. *Id.* s. 68. And so, every constable in any parish or place, and every relieving officer, &c. who shall have knowledge that any person in such parish or place, not a pauper and not wandering at large, is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, shall, within three days after obtaining such knowledge, give information thereof upon oath to a justice under the penalty of 10*l.* *Id.* ss. 68, 70. The justice will then, by an order under his hand and seal, require the constable, &c. to bring the lunatic before any two justices of the same county or borough. Any constable whom the justices may require to do so, must then forthwith convey such person to such asylum as may be named in the order of justices. *Id.* s. 68.

*Military.*

*Billeting troops on service.*] By the annual Mutiny Act, all constables of parishes and places, and other persons specified in the Act, are required to billet the officers and soldiers in victualling houses and other houses specified in this Act, [and in beer-houses licensed to sell beer to be drunk upon the premises, 4 & 5 Will. 4, c. 85, s. 5:] the constables are required to billet all soldiers and their horses, on their march, in a just and equal proportion, upon the keepers of all houses within one mile of the place mentioned in the route, although some of such houses may be in the adjoining county, but no constable is authorized to billet soldiers out of the county to which he belongs, when the constable of the adjoining county shall be present, and undertake to billet the due proportion of men in his county;—provided that, to prevent or punish all abuses in billeting soldiers, any justice within his jurisdiction, by warrant or order under his hand, may require any constable to give him an account in writing of the number of officers and soldiers who shall be quartered by him, together with the names of the persons upon whom they are billeted, stating the street or place where such persons dwell, and the sign, if any, belonging to those houses.

*Billeting the guards.*] The officers and soldiers of Her Majesty's foot guards shall be billeted within the city and liberties of Westminster, and places adjacent, lying in the county of Middlesex (except the city of London) and in the

county of Surrey, and in the borough of Southwark, in the same manner; and the said constables shall at every general sessions of the peace, to be holden for the said city and liberties, counties and boroughs respectively, make and deliver to the justices then in open session assembled, upon oath, lists signed by them respectively, of the houses subject by this Act to receive officers and soldiers, together with the names and ranks of all officers and soldiers billeted on each respectively. *Mutiny Act, s. 53.*

*Offences with respect to billeting.*] If any constable or other person, who shall be employed in billeting any officers or soldiers, shall billet any such officer or soldier in any house not within the meaning of the Act, without the consent of the owner or occupier thereof;—or shall neglect or refuse to billet any officer or soldier on duty, when thereunto required, provided sufficient notice be given before the arrival of such troops;—or shall receive, demand, or agree for any money or reward whatsoever, in order to excuse any person from receiving such officer or soldier, &c.,—such constable shall forfeit for every offence, neglect, or refusal, any sum not exceeding 5*l.* nor less than 40*s.*

*Militia.*

If it become necessary to ballot for the militia, the constable, tithingman, &c., shall, within fourteen days after any return of men liable to serve is required, give or leave notice in writing, in the form prescribed by the Act, to or for every occupier of every dwelling-house. 42 Geo. 3, c. 90, s. 26. Within one month after having delivered these notices, the constables, &c., are to make out in every year a fair and true list in writing, according to the form given in the Act, of the names of all the men usually and at that time dwelling within the parish, &c., and shall affix a true copy of every list on the door of the church or chapel belonging to every parish, &c., and also a notice in writing at the bottom of the said copy of such list of the day and hour, and place of meeting for hearing appeals, and that all persons who shall think themselves aggrieved may then appeal, and that no appeal will be afterwards received; and shall afterwards make a return of such list as aforesaid, or a true and exact copy thereof, to the deputy-lieutenants of the subdivision. *Id.* s. 28. On the days and at the places appointed for the returns of the lists, the constables, &c., must attend and verify their returns upon oath. *Id.* ss. 30, 32.

Balloting for the militia, however, and the making out of lists, is now suspended. 18 & 19 Vict. c. 106.

*Prosecuting Disorderly Houses, Gaming Houses, &c.*

By stat. 25 Geo. 2, c. 36, s. 5, in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses or other disorderly houses, it is enacted, that if any two inhabitants of any parish or place, paying scot or bearing lot therein, give notice to any constable (or other peace officer of the like nature, where there is no constable) of such parish or place of any person keeping a bawdy-house, gaming-house, or any other disorderly house in such parish or place, such constable or other officer shall forthwith go with such inhabitants to a justice of the peace of the county, &c. in which such parish lies, and shall enter into a recognizance in the penal sum of 30*l.*, to prosecute with effect such person for such offence at the next general or quarter sessions of the peace, or at the next assizes to be holden for the county in which such parish or place lies, as to the said justice shall seem meet; and such constable or other officer shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace of the county, &c., where the offence shall be committed, and shall be paid the same by the overseers of the poor of such parish or place: and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of 10*l.* to each of such inhabitants (see *Clarke v. Rice*, 1 B. & A. 694). See stat. 58 Geo. 4, c. 70, s. 7, *infra*. Upon such constable or other officer entering into such recognizance, the justice shall forthwith make out his warrant to bring the party accused before him. 25 Geo. 2, c. 36, s. 6. If the constable neglect or refuse to go before the justice, or to enter into the recognizance, or if he be wilfully negligent in carrying on the said prosecution, he shall forfeit the sum of 20*l.* to each of such inhabitants so giving notice as aforesaid. *Id.* s. 7. Such inhabitants are, notwithstanding, competent witnesses for the prosecution. *Id.* s. 9. If the overseers shall enter into such recognizance to prosecute such offender as the constable is required to enter into by stat. 25 Geo. 2, c. 36, s. 5, then the constable need not enter into such recognizance. 58 Geo. 3, c. 70, s. 7.

*Duty as to arresting poachers.*] Any constable or peace officer in any highway, street, or public place, may search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game, or any person aiding or abetting such person, and having in his possession any game unlawfully obtained, or any gun, part of gun, nets or engines used for the killing or taking game, and also to stop and search any cart or other conveyance in or upon which such constable or peace officer shall have good cause to suspect that any game or any such article or thing is being carried by any such person, and should there be found any game or any such article or thing as aforesaid upon such person, cart, or other conveyance, to seize and detain such game, article, or thing, and such constable or peace officer shall in such case apply to some justice of the peace for a summons citing such person to appear before two justices of the peace at petty sessions, and if such person shall have obtained such game by unlawfully going on any land in search or pursuit of game, or shall have used any such article, &c., he shall forfeit any sum not exceeding 5*l.*, and shall forfeit such game, guns, nets, &c. 25 & 26 Vict. c. 114, s. 2. In such cases the constable is not bound to prove that the poacher was actually seen on any land poaching; for the justices may infer this from the circumstances under which the constable arrested him. *Brown v. Turner*, 27 J. P. 103. *Evans v. Botterill*, 27 J. P. 292. *Fuller v. Newland*, 27 J. P. 406. And if the game, or gun, &c., be at once visible, no manual search is necessary before arresting. *Hall v. Knox*, 27 J. P. 756.

#### *Search Warrant.*

The warrant is directed to a constable. It should require him to search some specified place; and it should require him to do so in the daytime, (2 *Hale*, 150,) unless there be some very cogent reason for doing otherwise.

In executing this warrant, the owner of the goods, or some person who can identify them, should accompany the constable. If the house or other place specified in the warrant be open when they reach it, they may enter it, and search for the goods; if shut, the constable must demand admission, and if it be refused, he may break the door open. This will be justifiable on the part of the constable, whether the goods be found in the place or not. 2 *Hale*, 151. The constable then searches the place for the goods; and he must take care not to seize any but those designated in the warrant. See *Crozier v. Cundy*, 6 B. & C. 232. If he find the goods, or any part of them, he seizes them, and also apprehends the person in

whose house, &c., he has found them, and he carries both before a justice of the peace, who will then examine into the matter, in precisely the same manner as he would if the party had been brought before him charged with larceny or receiving stolen goods.

*Summons, Service of.*

A summons upon a charge for an indictable offence is served by a constable or other peace officer upon the person to whom it is directed, "either by delivering the same to him personally, or, if he cannot conveniently be met with, by leaving the same with some person for him at his last or most usual place of abode; and the constable or other peace officer who shall have served the same in manner aforesaid, shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of such summons." 11 & 12 Vict. c. 42, s. 9. And the same, with respect to a summons upon an information or complaint for a summary conviction or order. 11 & 12 Vict. c. 43, s. 1.

*Warrant to apprehend on an Information or Complaint.*

If the warrant be directed to a constable by name, he must execute it, and is punishable for not doing so, and he may execute it at any place within the jurisdiction of the justice granting it; if directed to the constable of a particular parish or district without naming him, he can only execute it within his parish or district; if directed to all constables within the county or other jurisdiction of the justice granting it, without naming any, any constable or peace officer within such county or jurisdiction, whether headborough, tithingman, borsholder, &c., or however else he may be designated, may execute it at any place within the jurisdiction of the justice, although it may happen to be out of the parish or district for which such constable or peace officer may have been appointed. And "such warrant may be executed by apprehending the defendant at any place within the county, riding, division, liberty, city, borough, or place, within which the justices issuing the same shall have jurisdiction, or in case of fresh pursuit, at any place in the next adjoining county or place within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough, or place, without having such warrant backed." 11 & 12 Vict. c. 43, s. 3. In other cases, to enable

the constable to execute it out of the jurisdiction, the warrant must be backed as directed, *ante*, p. 162. *Id.* When the party is apprehended, he must be brought before one or more justices of the peace for the county, &c., as directed by the warrant. The warrant, however, is not returnable at any particular time, but may remain in force until it is executed. *Id.* It cannot be executed on a Sunday.

*Warrant of Distress upon a Conviction, &c.*

*How executed.*] The constable, to whom a warrant of distress is granted either specially or generally, must execute it. For this purpose, he seizes so much of the goods of the defendant as he thinks will be sufficient by sale to produce the amount mentioned in the warrant, together with the costs of taking, keeping, and selling the distress. He cannot, however, break open the outer door of the defendant's house, to seize them, unless where the whole or part of the penalty for which the warrant is granted goes to the crown. 2 *Hawk.* c. 14, s. 5. If the sum mentioned in the warrant, together with the costs of making the distress, be not forthwith paid, the constable may remove the goods to some place of safe custody; for he is not warranted in impounding on the premises as in the case of a distress for rent, unless the defendant consent to it. He must keep the goods for the number of days mentioned in the warrant, and then sell them for the best price he can get for them. And the produce is thus disposed of:—first, the costs of taking, keeping, and selling the distress are deducted; then the sum mentioned in the warrant, or so much of it as has been produced by the levy, is paid over to the clerk of the justices named in the warrant, and the surplus, if any, is paid to the defendant.

*In what cases backed.*] If sufficient distress be not found within the jurisdiction of the justice granting the warrant, and the constable have reason to believe that goods of the defendant may be found in some other county or district, he may present the warrant to a justice of the peace of such other county or district, and upon his swearing to the handwriting of the justice who granted the warrant, the justice to whom he presents it will make an indorsement on it, authorizing the execution of it within the limits of his jurisdiction; and "by virtue of which said warrant and indorsement, the penalty or sum aforesaid, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to



whom such warrant was originally directed, or by any constable or other peace officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place." 11 & 12 Vict. c. 42, s. 19.

*How returned.*] Whatever the constable does in pursuance of the warrant, he states in an indorsement on the back of it, and returns it, together with the money levied, to the clerk of the justices named in it; but, if nothing be levied, the constable must certify the same to the magistrate who granted the warrant by an indorsement on it.

*Warrant of Commitment on a Conviction or Order.*

A warrant of commitment on a conviction or order, whether issued in the first instance, or after an ineffectual attempt to levy the amount by distress, is executed in the same manner as the warrant to apprehend last but one mentioned; except that, when the defendant is apprehended, the constable must take him to the house of correction or prison mentioned in the warrant, and there deliver him to the keeper, together with the warrant. See 11 & 12 Vict. c. 43, s. 21. The constable must have the warrant in his personal possession when arresting. *Galliard v. Laxton*, 31 L. J. 125, Q. B. If the defendant, instead of going to prison, pay the sum or sums mentioned in the warrant to the constable, the latter shall cease to execute the warrant, and shall pay the money forthwith to the clerk of the division in which the justice or justices who issues the warrant usually act.

## GUARDIANS OF THE POOR.

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## 1. GUARDIANS IN UNIONS.

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*Their number and qualification.*] When parishes or townships are formed into a union by order or with the concurrence of the poor law commissioners, for the administration of the laws for the relief of the poor, a board of guardians of the

poor for such union is constituted and chosen, and the workhouse or workhouses of the union are governed, and relief to the poor of the several parishes is administered, by such board,—one or more guardians are to be elected for each parish, township, or place separately maintaining its own poor in the union, the number being determined by the commissioners; the qualification for the office of guardian consists in being rated to the poor rate of some parish or township of the union, to such an amount, not exceeding the annual rental of 40*l.*, as shall be fixed by the commissioners, and without such qualification no person shall be eligible as a guardian. 4 & 5 Will. 4, c. 76, s. 38. The commissioners, having due regard to the relative population or circumstances of any parish included in a union, may alter the number of guardians to be elected for such parish. 7 & 8 Vict. c. 101, s. 18. But no assistant-overseer of any parish, no paid officer engaged in the administration of the laws for the relief of the poor, and no person who, having been such paid officer, shall have been dismissed from his office within five years previously, shall be capable of serving as a guardian; and no person receiving any emolument from the poor rates in any parish or union, shall be capable of serving as a guardian in any such parish or union. 5 & 6 Vict. c. 57, s. 14.

*How elected.*] The guardians in each parish, &c. of the union, are elected by the rate-payers, (4 & 5 Will. 4, c. 76, s. 38,) who shall have been rated to the poor rate the whole of the year preceding, and shall have paid their poor rates (7 & 8 Vict. c. 101, s. 16) for one whole year, and all due up to the time of voting, except those due within the six months immediately preceding (4 & 5 Will. 4, c. 76, s. 40);—and by the owners of property in the parish, (*Id.* s. 38,) who shall, previously to the day of voting, give a statement in writing of their names and addresses, and the description of their property, to the overseers before the 1st February preceding; *Id.* s. 40; 7 & 8 Vict. c. 101, s. 15;—also corporations, and joint-stock and other companies, may vote, by one of their officers appointed by them for the purpose, notice thereof being previously given to the overseers, in the same manner as by owners of property. 4 & 5 Will. 4, c. 76, s. 40. And they may re-elect those who have been guardians for the preceding year; or they may elect as guardians any person who may already have been chosen as guardian for any other parish. *Id.* s. 38. Each owner and each rate-payer under 50*l.* shall have one vote; 50*l.* and under 100*l.* two votes; 100*l.* and less than 150*l.* three votes; 150*l.* and less than 200*l.* four votes; 200*l.* and less than 250*l.* five votes; and if it amount to or exceed 250*l.* six votes (7 & 8 Vict. c. 101,

s. 14); and when the owner is also occupier, he may vote as well in respect of his occupation, as of his being such owner; owners also may vote by proxy. 4 & 5 Will. 4, c. 76, s. 40; and see 7 & 8 Vict. c. 101, s. 15. Occupiers of small tenements, in respect of which the owners are rated to the poor rate instead of the occupiers, are not entitled to vote in respect of their occupation; neither are the owners, though rated, entitled to vote as occupiers. 13 & 14 Vict. c. 99; 14 & 15 Vict. c. 39. The votes shall be in writing, and be collected and returned in such manner as the commissioners shall direct. 4 & 5 Will. 4, c. 76, s. 40. See *R. v. Oldham Union*, 16 Law J. 110, *m*. Any person put in nomination, however, may tender to the officer conducting the election his refusal in writing to serve the office; after which, the election, as regards him, shall be no further proceeded with. 5 & 6 Vict. c. 57, s. 9.

The election shall take place on the 25th day of March, or within [forty, 7 & 8 Vict. c. 101, s. 17,] days after, and the guardians elected for the several parishes, or for the several wards in any parish divided into wards [under 7 & 8 Vict. c. 101, ss. 19-21], shall continue to act as such until the 15th April inclusive in every year, notwithstanding their successors may have been elected previously to that day; and from and after the 15th April every guardian newly elected for any such parish or ward shall act as such guardian for the ensuing year (14 & 15 Vict. c. 106, s. 2); and in the event of a vacancy occurring by death, removal or resignation, or by refusal or disqualification to act, of any elected guardian,—or if the full number of guardians be not elected,—the remaining members of the board shall continue to act until the next election, or until the board shall be completed. 4 & 5 Will. 4, c. 76, s. 38; 5 & 6 Vict. c. 57, s. 12; and see *R. v. Todmorden and Walsden*, 1 Q. B. Rep. 185. And when no person shall be elected as guardian in a parish at the annual election, the person elected for the previous year may, if he think fit, continue to act until the next annual election; *Id.* s. 10; but he cannot do so unless there be an entire failure to elect in the parish. If there be two or more guardians to be elected and one only is returned, the old guardians go out of office, and cannot serve without a new election. The persons elected must act; they can only refuse the office at the time of the election, as already mentioned, and before they are actually elected, *supra*; and if they allow that opportunity to pass, they must serve. The poor law board, however, may accept the resignation of any person elected as guardian, tendered for any cause they may deem reasonable; and in every case of omission to elect, or of vacancy by death, resignation or disqualification, the commissioners

may order a new election for the completion of the board.  
5 & 6 Vict. c. 57, s. 11.

For the purpose of conducting the election, the commissioners, by their general order of the 24th July, 1847, ordered as follows:—

*Article 1.* The overseers of every parish in the union shall, before the twenty-sixth day of March in every year, distinguish in the rate book the name of every rate-payer in their parish who has been rated to the relief of the poor for the whole year immediately preceding the said day, and has paid the poor rates made and assessed upon him for the period of one whole year, except those which have been made or become due within the six months immediately preceding the same day.

*Art. 2.* The clerk shall at every future annual election of guardians perform the duties suitable to his office, or in his absence, &c., another may be appointed by the guardians.

*Art. 3.* The guardians shall, before or during every such election, appoint a competent number of persons to assist the clerk, and failing their doing so, the clerk may get assistance.

*Art. 4.* The overseers of every parish in the union, and every officer having the custody of the poor-rate books of any such parish, shall attend the clerk at such times with their books and papers.

*Art. 5.* The clerk shall prepare and sign a notice which shall contain particulars as to the number of guardians to be elected; their qualification; the persons by whom, and the places where, the nomination papers in respect of each parish are to be received, and the last day on which they are to be sent; the mode of voting in case of a contest, and the days on which the voting papers will be delivered and collected; the time and place for the examination and casting up of the votes.

And the clerk shall cause such notice to be published on or before the fifteenth day of March on the workhouse door and other usual places for parochial notices.

Whenever the day appointed in this order for the performance of any act relating to or connected with the election of guardians shall be a Sunday or Good Friday, such act shall be performed on the day next following, and each subsequent proceeding shall be postponed one day.

*Art. 7.* Any person entitled to vote in any parish, may nominate for the office of guardian thereof, himself, or any other person or number of persons (not exceeding the number of guardians to be elected for such parish), provided that the person or persons so nominated be legally qualified to be elected to that office.

*Art. 8.* Every nomination shall be in writing in the form

marked in the schedule to these rules, and be signed by one person only, as the party nominating, and shall be sent after the fourteenth and on or before the twenty-sixth day of March, to the clerk, or to such person or persons as may have been appointed to receive the same, and the clerk, or such person or persons, shall, on the receipt thereof, mark thereon the date of its receipt, and also a number according to the order of its receipt: provided that no nomination sent before the fifteenth or after the said twenty-sixth day of March shall be valid.

*Art. 9.* If the number of the persons nominated for the office of guardian for any parish shall be the same as, or less than, the number of guardians to be elected for such parish, such persons, if duly qualified, shall be deemed to be the elected guardians for such parish for the ensuing year, and shall be certified as such by the clerk under his hand as hereinafter provided in Art. 22.

*Art. 10.* But if the number of the duly qualified persons nominated for the office of guardian for any parish shall exceed the number of guardians to be elected therein, the clerk shall cause voting papers, in the form marked (C.) in the schedules to these rules annexed, to be prepared and filled up, and shall insert therein the names of all the persons nominated, in the order in which the nomination papers were received; but it shall not be necessary to insert more than once the name of any person nominated.

*Art. 11.* The clerk shall on the fifth day of April cause one of such voting papers to be delivered by the persons appointed for that purpose, to the address in such parishes of each ratepayer, owner, and proxy qualified to vote therein.

*Art. 12.* If the clerk consider that any person nominated is not duly qualified to be a guardian, he shall state in the voting paper the fact that such person has been nominated, but that he considers such person not to be duly qualified.

*Art. 13.* If any person put in nomination for the office of guardian in any parish shall tender to the officer conducting the election his refusal, in writing, to serve such office, and if in consequence of such refusal the number of persons nominated for the office of guardian for such parish shall be the same as, or less than, the number of guardians to be elected for such parish, all or so many of the remaining candidates as shall be duly qualified shall be deemed to be the elected guardians for such parish for the ensuing year, and shall be certified as such by the clerk under his hand, as hereinafter provided in Art. 22.

*Art. 14.* Each voter shall write his initials in the voting paper delivered to him against the name or names of the person or persons (not exceeding the number of guardians to

be elected in the parish) for whom he intends to vote, and shall sign such voting paper; and when any person votes as a proxy, he shall in like manner write his own initials and sign his own name, and state also, in writing, the name of the person for whom he is proxy.

*Art. 15.* Provided that, if any voter cannot write, he shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest the affixing thereof, and shall write the name of the voter against such mark, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

*Art. 16.* If the voting paper is not in proper form, such voter shall be omitted in the calculation of votes.

*Art. 17.* The clerk shall cause the voting papers to be collected on the 7th day of April, by the persons appointed or employed for that purpose, in such manner as he shall direct.

*Art. 18.* No voting paper shall be received or admitted, unless the same have been delivered at the address in each parish of the voter, and collected by the persons appointed or employed for that purpose, except as is provided in Art. 19.

*Art. 19.* Provided that every person qualified to vote, who shall not on the fifth day of April have received a voting paper, shall, on application before the eighth day of April to the clerk at his office, be entitled to receive a voting paper and to fill up the same in the presence of the clerk, and then and there to deliver the same to him.

*Art. 20.* Provided also, that in case any voting paper duly delivered shall not have been collected through the default of the clerk, or the persons appointed or employed for that purpose, the voter in person may deliver the same to the clerk before twelve o'clock at noon on the eighth day of April.

*Art. 21.* The clerk shall on the 9th day of April, and on as many days immediately succeeding as may be necessary, attend at the board room of the guardians and cast up the votes.

*Art. 22.* The candidates, to the number of guardians to be elected for the parish, who being duly qualified, shall have obtained the greatest number of votes, shall be deemed to be the elected guardians for the parish, and shall be certified as such by the clerk under his hand.

*Art. 23.* The clerk, when he shall have ascertained that any candidate is duly elected as guardian, shall notify the fact of his having been so elected, by delivering or sending, or causing to be delivered or sent to him a notice in the form (D.) in the schedule to these rules annexed.

*Art. 24.* The clerk shall make a list containing the names of the candidates, together with (in case of a contest) the

number of votes given for each, and the names of the elected guardians, in the form marked (E.) in the schedule to these rules annexed, and shall sign and certify the same, and shall deliver such list, together with all the nomination and voting papers which he shall have received, to the guardians of the union, at their next meeting, who shall preserve the same for a period of not less than two years.

*Art. 25.* The clerk shall cause copies of such lists to be printed, and shall deliver or send, or cause to be delivered or sent, one or more of such copies to the overseers of each parish.

*Art. 26.* The overseers shall affix, or cause to be affixed, copies of such list, at the usual places for affixing in each parish notices of parochial business.

*Art. 27.* In case of the decease, necessary absence, refusal or disqualification to act, during the proceedings of the election, of the clerk or any other person appointed or employed to act in respect of such election, the delivery of the nominations, voting papers, or other documents to the successor of the clerk or person so dying, absenting himself, refusing or disqualified to act, shall, notwithstanding the terms of any notice issued, be as valid and effectual as if they had been delivered to such clerk or person.

If any question arise as to the right of any person to act as guardian, the poor law board may, if they think fit, inquire into the circumstances of the case, and issue such order therein, under their hands and seal, as they may deem requisite for determining the question; and no such order shall be removed by *certiorari*, unless the application for the writ be made during the term next after the issuing of the order. 5 & 6 Vict. c. 57, s. 8. And no defect in the qualification or election of any person acting as a guardian at a board of guardians, shall vitiate the proceedings of the board, if the majority of the members then assembled there shall be entitled to act as guardians. *Id.* s. 13. Also, by stat. 10 & 11 Vict. c. 109, s. 25, in any civil or criminal proceeding it shall not be necessary to prove the sending of the original order of the poor law commissioners, or of the commissioners constituting any board of guardians, in any case in which any persons professing to form a board in obedience to such order shall have taken upon themselves to act, and shall have continued for three years to act, in the execution of the laws for the relief of the poor; and in no proceeding shall it be lawful to question the qualification or validity of the election of any person as a guardian after the end of twelve months next following the election, or the time when the alleged disqualification or want of qualification of the person, against whom such proceeding shall be directed, shall have arisen.



*Malpractices at election of guardians.*] If any person, pending or after the election of any guardian or guardians, shall wilfully, fraudulently, and with intent to affect the result of such election, commit any of the acts following—that is to say, fabricate in whole or in part, alter, deface, destroy, abstract or purloin any nomination or voting paper used therein, or personate any person entitled to vote at such election, or falsely assume to act in the name or on the behalf of any person so entitled to vote, or interrupt the distribution or collection of the voting papers, or distribute or collect the same under a false pretence of being lawfully authorized to do so; every such person so offending shall, for every such offence, be liable, upon conviction thereof before any two justices, to be imprisoned in the common gaol or house of correction for any period not exceeding three months, with or without hard labour. 14 & 15 Vict. c. 105, s. 3.

*Justices of the peace, guardians ex officio.*] Every justice of the peace, residing in any parish, [or in any extra-parochial place, the boundary line of which, or the greater part of the boundary line of which, is included within or coincident with the boundary line of such union, 7 & 8 Vict. c. 101, s. 24,] and acting for the county, riding, or division in which the same may be situated, shall be an *ex officio* guardian of the united or common workhouse, and shall, until such board of guardians shall be duly elected and constituted as aforesaid, and also in case of any irregularity or delay in any subsequent election of guardians, receive and carry into effect the rules, orders and regulations of the said commissioners; and after such board shall be elected and constituted as aforesaid, every such justice shall *ex officio* be, and be entitled (if he think fit) to act as, a member of such board, in addition to and in like manner as such elected guardians. 4 & 5 Will. 4, c. 76, s. 38. And he shall not be disabled from acting as a justice at any petty, special or general quarter sessions, in any matter, merely on the ground that he is *ex officio* a member of any board of guardians complaining, interested or concerned in such matter, or has acted as such at any meeting of the board. 5 & 6 Vict. c. 57, s. 15.

*Guardians incorporated,—how to sue and be sued.*] The guardians are a corporation, and are called "*The guardians of the poor of the — union (or, of the parish of —) in the county of —;*" and as such, they may accept, take and hold, (for the benefit of such union or parish,) any buildings, lands, or hereditaments, goods, effects, or other property, and may use a common seal; and by that name they may bring actions, prefer indictments, and sue and be sued, and take or

resist all other proceedings for or in relation to any property, or any bonds, contracts, securities, or instruments, given or to be given to them in virtue of their office; and in every such action and indictment, relating to any property, it shall be sufficient to lay or state the property to be that of the guardians of the — union, or of the parish of —. 5 & 6 Will. 4, c. 69, s. 7; 5 & 6 Vict. c. 57, s. 16. And in all cases in which they may make any application or complaint, or take any proceedings before justices at petty, special, general or quarter sessions, they may empower any of their officers to do so, by order in writing under the hand of the presiding-chairman, and sealed with the common seal of the board. 5 & 6 Vict. c. 57, s. 17. As a general rule, one board of guardians cannot sue another board for money paid for the relief of their non-settled poor. *Wycombe Union v. Eton Union*, 1 H. & N. 687; 21 J. P. 70.

*Their meetings.*] By the consolidated order of the poor law commissioners, 24th July, 1847, it is ordered as follows:

*Art. 28.* The guardians shall, upon the day of the week, and at the time of day, and at the place already appointed for holding the ordinary meetings, hold an ordinary meeting once at the least in every week or fortnight for the execution of their duties; and may, when they think fit, change the period, time, and place of such ordinary meeting, with the consent of the commissioners previously obtained.

*Art. 29.* The guardians shall, at the first meeting after the fifteenth day of April, elect out of the whole number of guardians a chairman and a vice-chairman, who, provided they be guardians at the time, shall continue respectively to act as such chairman and vice-chairman for the year next ensuing.

*Art. 30.* The guardians at any time may elect two vice-chairmen, and if such vice-chairmen be appointed at the same time, the guardians shall determine their precedence; according to which precedence one of the said vice-chairmen shall thenceforth preside and act as in the case when only one vice-chairman is elected.

*Art. 31.* If a chairman or a vice-chairman cease to be a guardian, or refuse, or become incapable to act as chairman or vice-chairman, before the expiration of the term of office, the guardians shall, within one month after the occurrence of the vacancy, refusal, or incapacity, elect some other guardian to be chairman or vice-chairman, as the case may be.

*Art. 32.* Whereas no act of any meeting of the guardians will be valid unless three guardians be present and concur therein; if three guardians be not present at any meeting, the clerk shall make an entry of that fact in the minute book, and

the time for holding such meeting shall be deemed to have expired as soon as the said entry shall have been made. But one hour at least shall be allowed to elapse from the time fixed for the commencement of the meeting, before such entry shall be made.

*Art. 33.* If three or four or more guardians be present at any ordinary meeting, such three, or the majority of such four or more guardians, may adjourn the same to the day of the next ordinary meeting, or to some other day previous to the next ordinary meeting.

*Art. 34.* An extraordinary meeting of the guardians may be summoned to be held at any time, upon the requisition of any two guardians, addressed to the clerk. Every such requisition shall be made in writing, in the form (F.) hereunto annexed, and no business, other than the business specified in the said requisition, shall be transacted at such extraordinary meeting.

*Art. 35.* Notice of every change in the period, time, or place of holding any meeting, and notice of the adjournment of any meeting, and notice of every extraordinary meeting, shall be given in writing to every guardian. Every such notice shall be respectively in the forms (G.), (H.), and (I.) hereunto annexed, and shall be given or sent by the clerk to every guardian, or left at his place of abode two days, if practicable, before the day appointed for the meeting to which it relates.

*Art. 36.* If any case of emergency arise, requiring that a meeting of the guardians should immediately take place, they, or any three of them, may meet at the ordinary place of meeting, and take such case into consideration, and may make an order thereon.

*Proceedings of the board.]* By the same consolidated order it is ordered as follows:—

*Art. 37.* At every meeting the chairman, or, in his absence, a vice-chairman, shall preside; but if at the commencement of any meeting the chairman and vice-chairman or vice-chairmen be absent, the guardians present shall elect one of themselves to preside at such meeting as chairman thereof, until the chairman or a vice-chairman take the chair.

*Art. 38.* Every question at any meeting consisting of more than three guardians, shall be determined by a majority of the votes of the guardians present thereat, and voting on the question. [And by stat. 12 & 13 Vict. c. 103, s. 19, in case of an equality of votes, the presiding chairman shall have a second or casting vote.]

*Art. 39.* No resolution agreed to or adopted by the guardians shall be rescinded or altered by them, unless some guar-

dians shall have given to the board seven days' notice of a motion to rescind or alter such resolutions, which notice shall be forthwith entered on the minutes by the clerk. Provided always, that this regulation shall not extend to any resolution which immediately concerns the allowance of relief to any person, or the punishment of any pauper, or to any resolution which the commissioners may request the guardians to consider or amend, or to any question of emergency.

*Art. 40.* The guardians may from time to time (as occasion may require) appoint a committee to consider and report on any special subject, and such committee may meet at such times and places as to them may seem convenient; but no act or decision of any such committee shall of itself be deemed to be the act of the guardians.

*Art. 41.* At every ordinary meeting of the guardians, the business shall, as far as may be convenient, be conducted in the following order:—

First.—The minutes of the last ordinary meeting, and of any other meeting which may have been held since such ordinary meeting, shall be read to the guardians; and in order that such minutes may be recognized as a record of the acts of the guardians at their last meeting, they shall be signed by the chairman presiding at the meeting at which such minutes are read, and an entry of the same having been so read shall be made in the minutes of the day when read.

Secondly.—The guardians shall dispose of such business as may arise out of the minutes so read, and shall give the necessary directions thereon.

Thirdly.—They shall proceed to give the necessary directions respecting all applications for relief made since the last ordinary meeting, and also respecting the amount and nature of relief to be given and continued to the paupers then in the receipt of relief, until the next ordinary meeting, or for such other time as such relief may be deemed to be necessary.

Fourthly.—They shall hear and consider any application for relief which may be then made, and determine thereon.

Fifthly.—They shall read the report of the state of the workhouse or workhouses, examine all books and accounts relative to the relief of the paupers of the union, and give all needful directions concerning the management and discipline of the said workhouse or workhouses, and the providing of furniture and stores and other articles.

Sixthly.—They shall examine the treasurer's account, and shall, when necessary, make orders on the overseers or other proper authorities of the several parishes in the union for providing such sums as may be lawfully re-

quired by the guardians on account of the respective parishes.

Seventhly.—They shall transact any such business as may not fall within any of the above clauses.

*Art. 42.* When the guardians have allowed relief in the workhouse to any applicant, a written or printed order for his admission therein, signed by the clerk, shall be forthwith delivered to the applicant, or to any person on his behalf.

*Art. 43.* When the guardians have allowed out-door relief, in money or kind, to any applicant, the particulars of such relief shall be entered by the proper relieving officer, in a ticket, according to the Form (K.), and such ticket shall be delivered by him to the applicant, or to some person on his behalf.

*Assessment committee.*] Every year, at the first meeting after the annual election of guardians, they shall elect an assessment committee, not less than six nor more than twelve, one-third being *ex officio* guardians, if there are so many. 25 & 26 Vict. c. 103, s. 2. The object of this committee is to see that the valuation of the several parishes in the union is uniform. The major part of the committee present are to act, a quorum being not less than one-third of the whole committee, or less than three, the chairman having a casting vote. *Id.* s. 9. The clerk of the guardians, or assistant clerk, is to act as the clerk of the committee, and books are to be kept of the proceedings. *Id.* ss. 10, 11. They may require returns from the overseers, collectors, &c., and may order the overseers to prepare a valuation list, or new and amended lists, (*Id.* ss. 14, 25,) or a person to make such list for the overseers. *Id.* s. 16. The committee are to hold meetings to hear objections against the list. When the assessment committee for any union shall have approved valuation lists for all the parishes comprised within such union, the guardians of such union in computing the amount of contribution to the common fund for the several parishes, shall thenceforward take the annual rateable value of the property in such parishes respectively, from the valuation lists for the time being. *Id.* s. 30. The overseers of any parish in the union may appeal against the valuation to the quarter sessions, notice being given to the guardians of the union. *Id.* s. 32.

*Contracts by them.*] By the same consolidated order, it is ordered as follows:—

*Art. 44.* All contracts to be entered into on behalf of the union, relating to the maintenance, clothing, lodging, employment, or relief of the poor, or for any other purpose relating

to or connected with the general management of the poor, shall be made and entered into by the guardians.

Contracts made by or on behalf of any parish or union, not in conformity with the regulations of the commissioners, in that behalf in force at the time of making and entering into the same, or otherwise sanctioned by them, are voidable, and if the poor law board shall so direct, shall be null and void; and all payments made thereafter under such contract shall be disallowed in the passing of the accounts of the overseers, guardians, or officer, by whom the payment shall have been made. 4 & 5 Will. 4, c. 75, s. 49.

*Art. 45.* The guardians shall require tenders to be made in some sealed paper for the supply of all provisions, fuel, clothing, furniture, or other goods or materials, the consumption of which may be estimated, one month with another, to exceed 10% per month, and of all provisions, fuel, clothing, furniture, or other goods or materials, the cost of which may be reasonably estimated to exceed 50% in a single sum, and shall purchase the same upon contracts to be entered into after the receipt of such tenders.

*Art. 46.* Any work or repairs to be executed in the workhouse, or the premises connected with the workhouse, or any fixtures to be put up therein, which may respectively be reasonably estimated to exceed the cost of 50% in one sum, shall be contracted for by the guardians, on sealed tenders, in the manner prescribed in Articles 45 and 47.

*Art. 47.* Notice of the nature and conditions of the contract to be entered into, of the estimated amount of the articles required, of the last day on which tenders will be received, and the day on which the tenders will be opened, shall be given in some newspaper circulating in the union, not less than ten days previous to the last day on which such tenders are to be received; and no tender shall be opened by the clerk, or any guardian, or other person, prior to the day specified in such notice, or otherwise than at a meeting of the said guardians.

*Art. 48.* When any tender is accepted, the party making the tender shall, in pursuance of these regulations, enter into a contract, in writing, with the guardians, containing the terms, conditions, and stipulations mutually agreed upon, and whenever the guardians deem it advisable, the party contracting shall find one or more surety or sureties, who shall enter into a bond conditioned for the due performance of the contract, or shall otherwise secure the same.

*Art. 49.* Provided always, that if, from the peculiar nature of any provisions, fuel, clothing, furniture, goods, materials, or fixtures to be supplied, or of any work or repairs to be executed, it shall appear to the guardians desirable that a specific

person or persons be employed to supply or execute the same, without requiring sealed tenders as hereinbefore directed, it shall be lawful for such guardians, with the consent of the commissioners first obtained, to enter into a contract with the said person or persons, and to require such surety and securities as are specified in Art. 48.

*Art. 50.* Every contract to be hereafter made by any guardians shall contain a stipulation requiring the contractor to send in his bill or account of the sum due to him for goods or work, on or before some day to be named in the contract.

*Art. 51.* The guardians shall fix some day or days, not being more than twenty-one days after the end of each quarter, for the attendance of contractors and tradesmen, or their authorized agents, and the clerk shall notify such day to every contractor or tradesman to whom money may be due, or to his agent, or he shall, under the direction of the guardians, cause the same to be advertised in some newspaper.

Contracts, to bind the guardians, ought to be under their corporate seal, and should relate to some matter incident to the purposes for which they were incorporated. Thus in an action by J. S. against the board of guardians, for the value of the work verbally agreed for, the court held that they were not liable, the contract not being made under seal, and being for a matter which was not incident to the purposes for which the defendants were incorporated. *Paine v. Guardians of the Strand Union*, 15 Law J. 89, m. And, for the same reason, it has been holden that an action would not lie against the guardians of a union, by a collector of poor rates, for his poundage. *Smart v. Guardians of the West Ham Union*, 24 Law J. 201, ex. But where the guardians of a union verbally directed their officer to have gates made for their union workhouse, and they were made by the plaintiff accordingly, and set up, and retained; the jury having found the gates to be necessary for the purposes for which the defendants were incorporated, the defendants were held liable. *Sanders v. Guardians of the St. Neot's Union*, 15 Law J. 104, m. See also *Haigh v. North Brierley Union*, 28 Law J. 62, Q. B.

*Orders for contributions and payments.*] The several parishes in the union contribute to the common fund of the union in proportion to the annual rateable value of the lands in such parishes assessable to the poor rate, whether the lands be actually rated or not. 24 & 25 Vict. c. 55, s. 9. And in computing this proportion, the annual rateable value of such property shall be taken from the valuation to the county or borough rate, (*Id.* s. 10,) unless the valuation list has been made under the Union Assessment Act, when the latter is to be

taken as the basis of calculation. 25 & 26 Vict. c. 103, s. 30. By the consolidated order of July, 1847, it is provided as follows :—

*Art. 82.* The guardians shall make orders on the overseers or other proper authorities of every parish of the union, from time to time, for the payment to the guardians of all such sums as may be required by them for the relief of the poor of the parish, and for the contribution of the parish to the common fund of the union, and for any other expenses chargeable by the guardians on the parish; and in such orders the contributions shall be directed to be paid in one sum or by instalments, on days specified, as to the guardians may seem fit.

*Payments by them.]* By the consolidated order, *Art. 84*, the guardians shall pay every sum greater than 5*l.*, by an order, which shall be drawn upon the treasurer of the union, and shall be signed by the presiding chairman and two other guardians at a meeting, and shall be countersigned by the clerk.

*Art. 85.* The guardians shall examine at their board, or shall cause to be examined by some committee, or guardian authorized by them for the purpose, every bill exceeding in amount 1*l.* (except the salaries of officers) brought against the union; and when any such bill has been allowed by the board, or by such committee or guardian, a note of the allowance thereof shall be made on the face of the bill before the amount is paid.

*Custody of bonds.] Art. 86.* (Consolidated order.) The guardians shall provide for the safe custody of all bonds given in pursuance of the regulations of the commissioners, so always that no bond given by any person shall remain in the custody of such person himself.

*Art. 87.* The guardians shall, at the audit next after the twenty-fifth day of March in every year, cause every person having the custody of bonds given by any officer of the union, to produce such bonds to the auditor for his inspection.

*What costs, &c., they may pay.]* It shall be lawful for any board of guardians or district board to pay out of the funds in their hands the reasonable costs of the apprehension and of the prosecution of any person who, according to the laws in force at the time being, is charged with refusing or neglecting to maintain himself or his family, or with running away and leaving his family chargeable, or whereby such family has become chargeable,—or with wilfully neglecting or disobeying the rules, orders, and regulations of the poor law commissioners, or with any offence or misbehaviour in any workhouse,—or with deserting or running away from any workhouse, and car-



rying away clothes, linen, or other goods or things belonging to any workhouse, or given or procured or provided as or for relief,—or with neglect or disobedience of the reasonable and lawful orders of justices or guardians, or of any district board, in the administration of the laws relating to the relief of the poor,—or with obstructing or assaulting any officer engaged in the administration of the laws for relief of the poor,—or with fraudulently obtaining, stealing, purloining, embezzling, wasting, or injuring, or wilfully misapplying, any property applicable to or connected with the relief of the poor, or with any offence directly affecting the administration of the laws for the relief of the poor,—and the reasonable costs of apprehending and prosecuting any officer who may have been employed in the administration of the laws for the relief of the poor, for any neglect or breach of any duty of his office, or for any maltreatment or abuse of any poor person;—and, subject to the approval of the said commissioners, every board of guardians or district board shall pay the costs of all legal proceedings taken by the auditor, or under his direction, for the protection of the poor rates or property of any parish, union, or district, or taken by any other person whom the board of guardians or district board have authorized or directed to institute such prosecution or legal proceedings; and to the extent to which any such costs may not be repaid by the offending or other party, or from the county, liberty, or borough rates, the guardians of any union then may, in any of the cases aforesaid, having due regard to the circumstances of the case, and subject to the approval of the poor law commissioners, charge such expenses, either to the common funds of the union, or to any parish or parishes comprised therein; and the district board of any district may, having like regard to the circumstances of the case, and subject to the like approval of the poor law commissioners, charge such expenses, either to the funds of the whole of such district, or on any one or more of the unions and parishes comprised therein. 7 & 8 Vict. c. 101, s. 59.

*Their duty in maintaining the poor out of the parish funds.*] By stat. 4 & 5 Will. 4, c. 76, s. 88, in all unions under that Act, where a board of guardians shall be constituted and chosen, "the workhouse or workhouses of such union shall be governed, and the relief of the poor in such union shall be administered, by such board of guardians"

And by sect. 54, the ordering, giving, and directing of all relief to the poor of any parish, which according to the provisions of stat. 22 Geo. 3, c. 83, usually called "Gilbert's Act," or 59 Geo. 3, c. 12, usually called "Sturges Bourne's Act," or of stat. 1 & 2 Will. 4, c. 80, the Select Vestry Act, or of this Act, or of any local Acts, shall be under the govern-

ment and control of any guardians of the poor, or of any select vestry, and whether forming any part of any union or incorporation or not (but subject in all cases to, and saving and excepting the powers of the said commissioners appointed under this Act), shall appertain and belong exclusively to the guardians of the poor or select vestry, according to the respective provisions of the Acts under which such guardians or select vestry may have been or shall be appointed, and it shall not be lawful for any overseer of the poor to give any further or other relief or allowances from the poor rate, than such as shall be ordered by such guardians or select vestry;—except in cases of sudden and urgent necessity, in which cases he is required to give such temporary relief as each case shall require, in articles of absolute necessity, but not in money, and whether the applicant for relief be settled in the parish where he shall apply for relief or not.

Also, by the consolidated order of the commissioners, 24th July, 1847, Art. 152, the commissioners declare, that, subject to the rules and regulations herein contained, the guidance, government, and control of every workhouse, and of the officers, servants, assistants, and paupers within such workhouse, shall be exercised by the guardians of the union.

The guardians of the poor of unions or parishes relieve the poor in the respective unions or parishes, either in workhouses or out of them, in the manner ordained by the order of the poor law commissioners above mentioned. And for this purpose, and to defray the common charges of the union and other costs and charges which the guardians may incur on behalf of the parish, the churchwardens and overseers of the respective parishes must pay to the guardians, from time to time, out of the poor rates made and collected by them, such sums as the guardians may require, and in such proportions as the guardians shall direct. In unions constituted under the Poor Law Amendment Act, the poor law commissioners, by their consolidated order, 25th July, 1847, provide for the mode of payment.

And by stat. 2 & 3 Vict. c. 84, s. 1, "in every case in which any contribution, by overseers or other officers of any parish, of monies required by the board of guardians or persons acting as guardians for such parish, or for any union which shall include such parish, for the performance of their duties, shall be in arrear, it shall be lawful for any two justices acting within the district to cause the amount in arrear, together with the costs, to be levied and recovered from the said overseers or other officers. And by stat. 12 & 13 Vict. c. 103, s. 7, it shall be lawful for the guardians to enforce such order against any one of the overseers served as fully and as effectually as if a copy thereof had been also served upon every one

of such overseers or other officers. And by stat. 7 & 8 Vict. c. 101, s. 63, if the overseers of any parish wilfully neglect to make or collect sufficient rates, every such overseer shall upon conviction thereof forfeit and pay for every such offence any sum not exceeding 20*l.* As to the manner in which relief is to be administered, see *Arch. Poor Law, Justice of the Peace*, 3rd vol. *passim*.

*Their duty as to 'able-bodied poor.'*] By stat. 4 & 5 Will. 4, c. 76, s. 52, the guardians are prohibited from giving relief to the able-bodied poor, except according to the rules of the poor law board; "but in case the overseers or guardians of any parish or union, in which such orders or regulations shall be in force, shall depart from them or any of them in any particular instance or instances of emergency, and shall within fifteen days after every such departure report the same and the grounds thereof to the said commissioners, and the said commissioners shall approve of such departure,—or if the relief so given shall have been given in food, temporary lodging, or medicine, and shall have been so reported as aforesaid,—then and in either of such cases the relief granted by such overseers or guardians, if otherwise lawful, shall not be unlawful or subject to be disallowed." *Id.* s. 52. The older statutes permitting out-door relief are now repealed. 4 & 5 Will. 4, c. 76, s. 53.

The rules laid down by the poor law commissioners with respect to unions, by their order of the 21st December, 1844, contain ample details as to the circumstances under which relief shall be given to the able-bodied out of the workhouse, and to those who do not reside in the union.

The poor-law board, in addition to the out-door relief prohibitory orders, have also issued to certain unions orders providing for a task of work for able-bodied paupers who may be relieved out of the workhouse. The provisions of the Labour Test Order contain details as to the mode of relieving the able-bodied male paupers by setting them to work.

*Relief to married women.*] By stat. 7 & 8 Vict. c. 101, s. 25, married women whose husbands are abroad, in prison, &c., may be relieved as if they were widows.

*Relief to widows.*] By stat. 7 & 8 Vict. c. 101, s. 26, widows in certain cases may be relieved, though not at the time resident in the parish or union.

*Relief to the families of absent seamen.*] Whenever during the absence of any seaman on a voyage, his wife, children, and

step-children, or any of them, become or becomes chargeable to any union or parish in the United Kingdom, such union or parish shall be entitled in certain cases, and to a certain extent, to be reimbursed out of the wages of such seaman earned during such voyage any sums properly expended during his absence in the maintenance of his said relations. 17 & 18 Vict. c. 104, s. 192.

For the purpose of obtaining such reimbursement, the guardians of the union or parish must give notice to the owner of the ship of the claim, and the said guardians, overseers, persons, or inspector may upon the seaman's return apply in a summary way in England or Ireland to any two justices having jurisdiction in such union or parish as aforesaid, and in Scotland to the sheriff of the county, for an order for such reimbursements as aforesaid. *Id.* s. 193.

*Relief to casual poor.*] By stat. 11 & 12 Vict. c. 110, s. 2, where any poor person having a fixed place of abode in a parish in any union formed under the provisions of stat. 4 & 5 Will. 4, c. 76, shall hereafter, by reason of accident, bodily casualty or sudden illness occurring to him while in some other parish, in which he has no legal settlement, require relief,—the cost of all the relief given by lawful authority in that behalf, as well medical as otherwise, shall, if the poor person be at the time in receipt of relief, be paid or reimbursed in like manner and by the same union or parish as any other relief shall be then payable,—but if he be not then in receipt of relief, it shall be paid or reimbursed, as the case may require, by the parish in which such poor person shall then have his place of abode,—unless by reason of any provision of the law he would, if otherwise chargeable, have been chargeable to the common fund of such union, in which case the payment of reimbursement shall be made by the guardians of the union comprising such parish, and shall be charged to the common fund of the union; and it shall be lawful for the guardians of any union, if they think proper, to pay for any medical or other assistance which shall be rendered to any poor person on the happening of any accident, bodily casualty, or sudden illness, although no order shall have been given for the same by them or any of their officers, or by the overseers, and to charge the same to some one parish in the union, or to the common fund of the union, according as such parish or union would have been liable for the ordinary relief of such poor person;—provided that nothing herein contained shall exempt the guardians of the union or parish, or their officers, or the overseers of the parish in which such poor person shall require relief by reason of such accident, bodily casualty, or sudden illness, from their liability to supply

the requisite relief to such poor person whilst in such union or parish. And see 24 & 25 Vict. c. 55, s. 4.

*Their duty as to non-settled and non-resident poor.*] By the consolidated order of the poor law commissioners, 24th July, 1847, Art. 77, if any board of guardians undertake to administer relief allowed to a non-settled pauper living within the union for which they act on behalf of the officers, or of the board of guardians, of the parish or union in which such pauper is deemed to be settled, every such undertaking shall be made in conformity with the rules and regulations of the commissioners in force at the time.

*Art. 78.* No money shall be transmitted to any guardians or to any officer of a parish or union, to be applied to the relief of any non-resident pauper, except in conformity with the provisions of this order.

*Art. 79.* No money shall be paid on account of any non-resident pauper to the guardians or to the officer of any union or parish in which the relief is administered by a board of guardians, except in one of the three following ways:—

No. 1. By post-office order payable to the treasurer of the union or parish to the account of which the money is to be paid, or to the banker of such treasurer.

No. 2. By cheque or order payable to the treasurer of such parish or union, or to his order.

No. 3. By cheque payable to bearer (where the same may lawfully be drawn), and crossed as payable through the treasurer of such parish or union, or his banker, or through the agent of such treasurer or banker; and every such cheque shall be so crossed by the clerk before it is signed by the presiding chairman.

*Art. 80.* Every account for relief duly administered to non-resident poor, shall be discharged by the guardians within two calendar months from the receipt of such account, by the transmission of the amount due, in one of the modes prescribed in Art. 70.

*Their duty in maintaining the poor out of the union fund.*] By stat. 11 & 12 Vict. c. 110, s. 1, the cost of the relief to be given to any poor person chargeable or becoming chargeable in any union formed or to be formed under the provisions of the stat. 4 & 5 Will. 4, c. 76, being a destitute wayfarer or wanderer or foundling, as well as the cost of the burial of the body of any such person dying within such union, shall be chargeable to the common fund of such union.

And by stat. 11 & 12 Vict. c. 110, s. 3, all the costs incurred in the relief, as well medical as otherwise, of the irremovable poor, and the expenses of the burial of any such person so

exempted at the time of his death, shall, if legally payable by the guardians of the union, likewise be charged to the said common fund. 24 & 25 Vict. c. 55, ss. 4, 8. And where in any such union a question shall arise between any parishes therein, or between the guardians and any parish or parishes therein, with reference to the charging of the cost of his relief as to whether any pauper be so exempted as aforesaid, the parties may jointly submit such question to the poor-law board. 11 & 12 Vict. c. 110, s. 4.

Also all the costs and expenses incurred, or hereafter to be incurred, in and about the obtaining any order of justices for the removal and maintenance of a lunatic pauper who shall have been or shall be removed under any such order to any asylum, licensed house, or registered hospital, and who, if not a lunatic, would have been exempt from removal by reason of some provision in stat. 9 & 10 Vict. c. 66, shall be borne by the common fund of the union comprising the parish wherein such pauper lunatic was resident at the time when such lunatic pauper was so removed to such asylum, licensed house, or registered hospital. 12 & 13 Vict. c. 103, s. 5; 24 & 25 Vict. c. 55, s. 8.

And the costs of all the relief which, under the provisions of this Act, shall be chargeable to the common fund of any union, shall be charged to the common fund of such union, in the same manner as union expenses are directed to be charged by stat. 4 & 5 Will. 4, c. 76; 11 & 12 Vict. c. 110, s. 6; 24 & 25 Vict. c. 55, s. 8.

*Their duty as to burying paupers.*] It shall be lawful for guardians, or where there are no guardians, for the overseers, to bury the body of any poor person which may be within their parish or union respectively, and to charge the expenses thereof to any parish under their control to which such person may have been chargeable, or in which he may have died, or otherwise in which such body may be; and unless the guardians, in compliance with the desire expressed by such person in his lifetime, or by any of his relations, or for any other cause, direct the body of such poor person to be buried in the churchyard or burial ground of the parish to which such person has been chargeable (which they are hereby authorized to do), every dead body which the guardians or any of their officers duly authorized shall direct to be buried at the expense of the poor rates, shall (unless the deceased person, or the husband or wife or next of kin of such deceased person, have otherwise desired), be buried in the churchyard or other consecrated burial ground in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred [or if that be closed or overcrowded, in the burial ground of a

neighbouring parish, (18 & 19 Vict. c. 79, s. 1,) or in the burial ground of any cemetery company or burial board with whom they may have agreed for the purpose (*Id.* s. 2)]; and in all cases of burial under the direction of the guardians or overseers as aforesaid, the fees of burial shall be paid out of the poor rates, and no officer connected with the poor law shall derive any personal gain thereby. 7 & 8 Vict. c. 101, s. 31. In the case of a destitute wayfarer, or wanderer, or foundling, dying in a union, the costs of burial are to be charged to the common fund of the union. 11 & 12 Vict. c. 110, s. 1; 12 & 13 Vict. c. 103, s. 1; 24 & 25 Vict. c. 55, s. 8.

## GOVERNMENT OF THE WORKHOUSE.

*Admission of paupers*, 195.  
*Classification of paupers*, 197.  
*Discipline and diet of paupers*, 197.

*Punishments for misbehaviour of paupers*, 198.  
*Visiting committee*, 200.  
*Repairs and alterations of workhouse*, 201.

By the consolidated order of the 24th July, 1847, Art. 152, the commissioners declare, that, subject to the rules and regulations contained in that order, the guidance, government, and control of every workhouse, and of the officers, servants, assistants, and paupers within such workhouse, shall be exercised by the guardians of the union—*i. e.*, by the guardians acting as a board. By sect. 38 of 4 & 5 Will. 4, c. 76, no guardian, except as therein excepted, shall have power to act in virtue of his office, except as a member and at a meeting of the board.

The rules and regulations for the government of the workhouse are contained in the following articles of the consolidated order.

*Admission of Paupers.*

*Art. 88.* Every pauper who shall be admitted into the workhouse, either upon his first or any subsequent admission, shall be admitted in some one of the following modes only, that is to say:—

By a written or printed order of the board of guardians, signed by their clerk according to Art. 42.

By a provisional written or printed order, signed by a relieving officer or an overseer.

By the master of the workhouse (or during his absence, or inability to act, by the matron), without any order, in any case of sudden or urgent necessity.

Provided that the master may admit any pauper delivered at the workhouse under an order of removal to a parish in the union.

*Art. 89.* No pauper shall be admitted under any written or printed order, as mentioned in Art. 88, if the same bear date more than six days before the pauper presents it at the workhouse.

*Art. 90.* If a pauper be admitted otherwise than by an order of the board of guardians, the admission of such pauper



shall be brought before the board of guardians at their next ordinary meeting, who shall decide on the propriety of the pauper's continuing in the workhouse or otherwise, and make an order accordingly.

*Art. 91.* As soon as the pauper is admitted, he shall be placed in some room to be appropriated to the reception of paupers on admission, and shall then be examined by the medical officer.

*Art. 92.* If the medical officer, upon such examination, pronounce the pauper to be labouring under any disease of body or mind, the pauper shall be placed in the sick ward, or in such other ward as the medical officer shall direct.

*Art. 93.* If the medical officer pronounce the pauper to be free from any such disease, the pauper shall be placed in the part of the workhouse assigned to the class to which he may belong.

*Art. 94.* No pauper shall be detained in a receiving ward for a longer time than is necessary for carrying into effect the regulations in Arts. 91, 92, and 93, if there be room in the proper ward for his reception.

*Art. 95.* Before being removed from the receiving ward, the pauper shall be thoroughly cleansed, and shall be clothed in a workhouse dress, and the clothes which he wore at the time of his admission shall be purified, and deposited in a place appropriated for that purpose, with the pauper's name affixed thereto. Such clothes shall be restored to the pauper when he leaves the workhouse.

*Art. 96.* Every pauper shall, upon his admission into the workhouse, be searched by or under the inspection of the proper officer, and all articles prohibited by any Act of parliament, or by this order, which may be found upon his person, shall be taken from him, and, so far as may be proper, restored to him at his departure from the workhouse.

The following are examples of prohibited articles :—

1. Spirituous or fermented liquors (Poor Law Amendment Act, ss. 91-94).
2. Articles of food not allowed by the dietary. (Art. 107.)
3. Letters or printed papers, having an improper tendency. (Art. 119.)
4. Cards or dice. (Art. 120.)
5. Matches, or highly combustible articles. (Art. 121.)

*Art. 97.* Provided always, that the regulations respecting the admission, clothing, and searching of paupers shall not apply to any casual poor wayfarer, unless the guardians shall so direct, or unless he is compelled to remain in the workhouse from illness or other sufficient cause, in which case he shall be admitted regularly as an inmate.

*Classification of the Paupers.*

*Art. 98.* The paupers, so far as the workhouse admits thereof, shall be classed as follows:—

Class 1. Men infirm through age or any other cause.

Class 2. Able-bodied men, and youths above the age of fifteen years.

Class 3. Boys above the age of seven years, and under that of fifteen.

Class 4. Women infirm through age, or any other cause.

Class 5. Able-bodied women, and girls above the age of fifteen years.

Class 6. Girls above the age of seven years, and under that of fifteen.

Class 7. Children under seven years of age.

To each class shall be assigned that ward or separate building and yard which may be best fitted for the reception of such class, and each class of paupers shall remain therein, without communication with those of any other class. But the guardians have power to vary this classification in special circumstances. Con. Order, Art. 99—101.

*Discipline and Diet of the Paupers.*

*Art. 102.* All the paupers in the workhouse, except the sick and insane, and the paupers of the first, fourth, and seventh classes, shall rise, be set to work, leave off work, and go to bed at the times mentioned in the Form (N.) hereunto annexed, and shall be allowed such intervals for their meals as are therein stated, and these several times shall be notified by the ringing of a bell: provided always, that the guardians may, with the consent of the commissioners, make such alterations in any of the said times or intervals, as the guardians may think fit.

The following is the Form (N.) referred to in Article 102.

	Time of Rising.	Interval for Breakfast.	Time for Work.	Interval for Dinner.	Time for Work.	Interval for Supper.	Time for going to Bed.
From 29th March to 29th Sept....	{ before 6 {	From { past 6 to 7	From 7 to 12	From 12 to 1	From 1 to 6	From 6 to 7	} 8 o'clock
From 29th Sept. to 25th March...	{ before 7 {	From { past 7 to 8	From 8 to 12	From 12 to 1	From 1 to 6	From 6 to 7	} 8 o'clock

Various details of the routine discipline of the workhouse are embodied in the same Consolidated Order, Arts. 103—121.

*Art. 122.* Any licensed minister of the religious persuasion of an inmate of the workhouse, who may at any time of the day, on the request of any inmate, enter the workhouse for the purpose of affording religious assistance to him, or for the purpose of instructing his child or children in the principles of his religion, shall give such assistance or instruction, so as not to interfere with the good order and discipline of the other inmates of the workhouse; and such religious assistance or instruction shall be strictly confined to inmates who are of the religious persuasion of such minister, and to the children of such inmates, except in the cases in which the guardians may lawfully permit religious assistance and instruction to be given to any paupers who are protestant dissenters, by licensed ministers who are protestant dissenters.

*Art. 123.* No work, except the necessary household work and cooking, shall be performed by the paupers on Sunday, Good Friday, and Christmas Day.

*Art. 124.* Prayers shall be read before breakfast and after supper every day, and divine service shall be performed every Sunday, Good Friday, and Christmas Day in the workhouse (unless the guardians, with the consent of the commissioners, otherwise direct), and at such prayers and divine service all the paupers shall attend, except the sick, persons of unsound mind, the young children, and such as are too infirm to do so; provided that those paupers who may object so to attend, on account of their professing religious principles differing from those of the established church, shall also be exempt from attendance.

*Art. 125.* The guardians may authorize any inmates of the workhouse, being members of the established church, to attend public worship at a parish church or chapel, on every Sunday, Good Friday, and Christmas Day, under the control and inspection of the master or porter, or other officer.

*Art. 126.* The guardians may also authorize any inmates of the workhouse, being dissenters from the established church, to attend public worship at any dissenting chapel in the neighbourhood of the workhouse, on every Sunday, Good Friday, and Christmas Day.

#### *Punishments for Misbehaviour of the Paupers.*

*Art. 127.* Any pauper, being an inmate of the workhouse, who shall neglect to observe such of the regulations in this order as are applicable to him as such inmate;

Or who shall make any noise when silence is ordered to be kept;

- Or shall use obscene or profane language ;
- Or shall by word or deed insult or revile any person ;
- Or shall threaten to strike or to assault any person ;
- Or shall not duly cleanse his person ;
- Or shall refuse or neglect to work, after having been required to do so ;
- Or shall pretend sickness ;
- Or shall play at cards or other game of chance ;
- Or shall refuse to go into his proper ward or yard, or shall enter or attempt to enter, without permission, the ward or yard appropriated to any class of paupers other than that to which he belongs ;
- Or shall climb over any fence or boundary wall surrounding any portion of the workhouse premises, or shall attempt to leave the workhouse otherwise than through the ordinary entrance ;
- Or shall misbehave in going to, at, or returning from public worship out of the workhouse, or at divine service or prayers in the workhouse ;
- Or, having received temporary leave of absence, and wearing the workhouse clothes, shall return to the workhouse after the appointed time of absence, without reasonable cause for the delay ;
- Or shall wilfully disobey any lawful order of any officer of the workhouse ;

Shall be deemed **DISORDERLY**.

*Art. 128.* Any pauper, being an inmate of the workhouse, who shall, within seven days, repeat any one, or commit more than one, of the offences specified in *Art. 127* ;

- Or who shall by word or deed insult or revile the master or matron, or any other officer of the workhouse, or any of the guardians ;
- Or shall wilfully disobey any lawful order of the master or matron, after such order shall have been repeated ;
- Or shall unlawfully strike or otherwise unlawfully assault any person ;
- Or shall wilfully or mischievously damage or soil any property whatsoever belonging to the guardians ;
- Or shall wilfully waste or spoil any provisions, stock, tools, or materials for work, belonging to the guardians ;
- Or shall be drunk ;
- Or shall act or write indecently or obscenely ;
- Or shall wilfully disturb other persons at public worship out of the workhouse, or at divine service or prayers in the workhouse ;

Shall be deemed **REFRACTORY**.

Details as to the mode of punishment of ill-conducted paupers are described in the Consolidated Order, *Art. 129—147*.

*Visiting Committee.*

*Art. 148.* The guardians shall appoint one or more *Visiting Committees* from their own body; and each of such committees shall carefully examine the workhouse or workhouses of the union once in every week at the least, inspect the last reports of the chaplain and medical officer, examine the stores, afford, so far as is practicable, to the inmates an opportunity of making any complaints, and investigate any complaints that may be made to them.

*Art. 149.* The visiting committee shall from time to time write such answers as the facts may warrant to the following queries, which are to be printed in a book, entitled the "Visitors' Book," to be provided by the guardians, and kept in every workhouse for that purpose, and to be submitted regularly to the guardians at their ordinary meetings:—

- Q. 1. Is the workhouse, with its wards, offices, yards, and appurtenances, clean and well ventilated in every part?—and is the bedding in proper order?—if not, state the defect or omission.
- Q. 2. Do the inmates of the workhouse, of all classes, appear clean in their persons, and decent and orderly in their behaviour; and is their clothing regularly changed?
- Q. 3. Are the inmates of each sex employed and kept at work as directed by the guardians, and is such work unobjectionable in its nature?—if any improvement can be suggested in their employment, state the same.
- Q. 4. Are the infirm of each sex properly attended to, according to their several conditions?
- Q. 5. Are the boys and girls in the school properly instructed as required by the regulations of the commissioners, and is their industrial training properly attended to?
- Q. 6. Are the young children properly nursed and taken care of, and do they appear in a clean and healthy state?—Is there any child not vaccinated?
- Q. 7. Is regular attendance given by the medical officer?—Are the inmates of the sick wards properly tended?—Are the nurses efficient?—Is there any infectious disease in the workhouse?
- Q. 8. Is there any dangerous lunatic or idiot in the workhouse?
- Q. 9. Is divine service regularly performed?—Are prayers regularly read?
- Q. 10. Is the established dietary duly observed?—and are the prescribed hours of meals regularly attended to?

- Q. 11. Are the provisions and other supplies of the qualities contracted for ?
- Q. 12. Is the classification properly observed, according to Arts. 98 and 99.
- Q. 13. Is any complaint made by any pauper against any officer, or in respect of the provisions or accommodations —if so, state the name of the complainant, and the subject of the complaint.
- Q. 14. Does the present number of inmates in the workhouse exceed that fixed by the poor law commissioners ?

*Repairs and Alterations of the Workhouse.*

*Art. 150.* The guardians shall once at least in every year, and as often as may be necessary for cleanliness, cause all the rooms, wards, offices, and privies belonging to the workhouse, to be limewashed.

*Art. 151.* The guardians shall cause the workhouse and all its furniture and appurtenances to be kept in good and substantial repair ; and shall, from time to time, remedy without delay any such defect in the repair of the house, its drainage, warmth, or ventilation, or in the furniture or fixtures thereof, as may tend to injure the health of the inmates.

*Their Duty as to Pauper Lunatics.*

<i>The lunatics who may be sent, 202.</i>	<i>Visitation of pauper lunatics not in asylums, 204.</i>
<i>Chargeable lunatics, 202.</i>	<i>Provision for sending pauper lunatics to asylums, 205.</i>
<i>Wandering lunatics, 203.</i>	<i>Provision as to lunatics wandering at large, &amp;c. 205.</i>
<i>Lunatics not chargeable, when neglected or ill-treated by their friends, 203.</i>	<i>Payment of fees to physicians, 205.</i>
<i>Expenses provided for, 203.</i>	<i>Penalties, 206.</i>
<i>Annual returns of pauper lunatics, 204.</i>	<i>Reception into hospitals, &amp;c., 206.</i>
<i>Pauper lunatics confined in asylums to be visited by guardians, 204.</i>	

*The lunatics who may be sent.*] The lunatics who may be sent to a lunatic asylum by order of justices, in pursuance of stat. 8 & 9 Vict. c. 126, are either lunatics chargeable to the parish from which they are sent,—or wandering lunatics,—or lunatics who are not chargeable, but who are neglected or ill-treated by their friends.

*Chargeable lunatics.*] In order that it may be known what lunatics are chargeable to a parish, and that proper measures may be taken for their care or cure, it is enacted by stat. 8 & 9 Vict. c. 126, s. 47, that the clerk of the board of guardians of every parish and union under a board of guardians, and the overseers of every parish not under a board of guardians, shall, on the first day of January in every year, or as soon after as may be, make out and sign a true and faithful list of all lunatics chargeable to the parish or union, in the form in schedule (D.) hereunto annexed,—and shall, on or before the first day of February next succeeding, lay one copy of such list before the visitors of the asylum of the county in which such union or parish is situate,—and shall transmit one copy of such list to the clerk of the peace of the county, or the clerk of the justices of the borough,—another copy of such list to the commissioners in lunacy, and another copy thereof to the poor law commissioners. 8 & 9 Vict. c. 126, s. 47.

Also, by sect. 48, the medical officer of every parish and union who shall have knowledge that any person chargeable is deemed to be a lunatic, shall give notice thereof in writing to

the overseers of the poor of the parish, if the parish be not within a union, and to the relieving officer of the union if the parish be within a union;—and every such overseer and relieving officer shall, within three days after obtaining such knowledge, give notice thereof to some justice of the county or borough within which such parish is situate. *Id.* s. 48. And if he neglect to do so, he is liable to a penalty of 10*l.* *Id.* s. 50. The overseer accordingly takes the lunatic before the justice, or the justice visits the lunatic, and after calling to his assistance a physician, surgeon, or apothecary, and examining the lunatic, makes an order to convey him to the lunatic asylum of the county or borough of which he is a justice, or if there be no such asylum, or there be no room for him in it, he makes an order to convey him to some private licensed asylum. *Id.* s. 48. By virtue of that order, the overseers, or some careful persons employed by them, must convey the lunatic to the asylum, and deliver him into the custody of the superintendent or keeper, together with the order.

*Wandering lunatics.]* Every overseer or relieving officer of a parish or union, who shall have knowledge that any person, wandering within his district, parish or union, is a lunatic, shall act in like manner. *Id.* ss. 49, 50.

*Lunatics not chargeable when neglected or ill-treated by their friends.]* Every overseer or relieving officer of a parish or union who shall have knowledge that any person within his district, parish, or union, not being chargeable to any parish, is deemed to be a lunatic, and is under the care of a relative, or other person, who neglects or cruelly treats him, shall also act in like manner. *Id.* ss. 45, 50.

*Expenses provided for.]* The expenses of obtaining the order, conveying the lunatic to the asylum, and maintaining him there, must be paid in the first instance by the parish, &c., from which he is sent; and, in the case of a wandering lunatic, if at the time he was apprehended, he was chargeable to some other parish, such other parish shall reimburse the removing parish for the expenses they have incurred. *Id.* ss. 49, 57, 61. If the parish is in union the expense is borne by the common fund of the union. 24 & 25 Vict. c. 55, s. 6.

If it be found that the lunatic has property, such property, by an order of justices, may be applied to the reimbursement of the expenses already incurred, and to the maintenance of the lunatic in the asylum for the future. See *Arch. Lun.* 24—30. Or if he have any relation able to maintain him, an order may be made upon such relation. 8 & 9 Vict. c. 126. Or if he have a settlement in another parish, two justices may



adjudicate his settlement, and make an order upon such parish, not only for the amount of the expenses already incurred, but also for a weekly sum to be paid to the proprietor or treasurer of the lunatic asylum in which the lunatic is placed. *Arch. Lun.* 31—47. Or if his place of settlement cannot be ascertained, two justices upon application may adjudge him to be chargeable to the county, and make an order upon the treasurer for the expenses already incurred, and for payment of a weekly sum to the asylum until the settlement shall be discovered. *Id.* p. 50. If, however, the lunatic had resided five years in the removing parish, before he was conveyed to the asylum, then if such parish be in a union, as well the expenses of the order and of the removal, as the expense of maintaining him in the asylum, must be paid out of the union fund, no matter where he is settled. *Id.*

All this should be fully investigated by the overseers, and the rights and liabilities of their parish fully ascertained, in order that they may be reimbursed the expenses they have incurred in respect of the lunatic, if their parish be not liable by law to bear them. The whole law upon the subject, the law and practice in appeals against lunatic orders, and the law as to criminal lunatics and lunatics likely to commit offences, will be found in Archbold's "*Law relative to Pauper Lunatics.*"

*Annual returns of pauper lunatics.]* The clerk of every board of guardians,—and the overseers of every parish not in a union, nor under a board of guardians,—shall, on the first day of January in every year, or as soon after as may be, make out and sign a true and faithful list of all lunatics chargeable to the union or parish,—and shall, on or before the first day of February next succeeding, send copies to the visitors of the asylum, the clerk of the peace of the county, or the clerk to the justices of the borough, to the commissioners in lunacy, and another copy thereof to the poor law board, under a penalty of 20*l.* 16 & 17 Vict. c. 97, s. 64.

*Pauper lunatics confined in asylums to be visited by guardians.]* Any physician, surgeon, or apothecary to be appointed by the guardians or the overseers, and also the guardians and the overseers, shall be permitted, whenever they see fit, between the hours of eight in the morning and six in the evening, to visit and examine any or every pauper lunatic chargeable to such union or parish confined in any asylum, registered hospital, or licensed house. *Id.* s. 65.

*Visitation of pauper lunatics not in asylums.]* Every pauper lunatic not in an asylum, or a hospital registered or house licensed for the reception of lunatics, shall be visited once in

every quarter of a year, by the medical officer, who shall prepare a list of lunatic paupers in a certain form and deliver the same to the guardians, to be by them sent to the commissioners in lunacy. *Id.* s. 66. 25 & 26 Vict. c. 111, s. 21. The guardians are also entitled to receive each half-year a statement of the condition of the pauper lunatics from the superintendent of every asylum. 25 & 26 Vict. c. 114, s. 34.

*Provision for sending pauper lunatics to asylums.*] Every medical officer of a parish or union who shall have knowledge that any pauper resident in such parish is deemed to be a lunatic, shall, within three days after obtaining such knowledge, give notice thereof in writing to a relieving officer of such parish, or if there is no relieving officer then to one of the overseers of such parish,—and the relieving officer shall within three days after obtaining such knowledge, give notice thereof to some justice of the county or borough within which such parish is situate. And thereupon the said justice shall, by an order under his hand and seal, require such relieving officer or overseer to bring such pauper before him, or some other justice. Or the pauper may be visited by the justice, who after examination may order the pauper to be sent to an asylum if fit to be removed. *Id.* s. 67. 25 & 26 Vict. c. 111, s. 19. And no lunatic shall be detained in a workhouse beyond fourteen days, unless a medical officer certify it is safe and there is accommodation. 25 & 26 Vict. c. 111, s. 20. And the visiting committee of guardians shall once a quarter enter in a book kept by the master of the workhouse observations as to the diet and treatment of the lunatics. *Id.* s. 37.

*Provision as to lunatics wandering at large, &c.*] Every constable,—and every relieving officer and overseer of any parish,—who shall have knowledge that any person wandering at large within such parish or place (whether or not such person be a pauper) is deemed to be a lunatic,—shall, immediately apprehend and take or cause such person to be apprehended and taken before a justice. And so if a person not a pauper be not under proper care or be cruelly treated, notice is to be given within three days to the justice. 16 & 17 Vict. c. 97, s. 68.

*Payment of fees to physicians, &c.*] The justices causing any person to be examined by any physician, surgeon, or apothecary, if they think fit so to do, may make an order upon the guardians of the union or parish or the overseers of the parish to which such person is chargeable for the payment of such reasonable remuneration to any such physician, &c., for the examination of such person, and of all other reasonable expenses in or about the examination of such person, and the

bringing him before such justice or justices, and in case he be ordered to be conveyed to any asylum, registered hospital, or licensed house, of conveying him thereto, as to such justice or justices may seem proper. *Id.* s. 69.

*Penalties.*] If any medical officer, relieving officer, or constable or overseer, fail to do their duty, each incurs a penalty of 10*l.* *Id.* s. 71.

*Reception into hospitals, &c.*] The justice's order may authorize the lunatic to be received into a county or borough asylum, or any other asylum for pauper lunatics; but the asylum for the pauper's parish is to be selected, if there is accommodation. *Id.* s. 72. But no pauper shall be received into any asylum, registered hospital, or licensed house, without a proper order and certificate. *Id.* s. 73. The visitors may remove the pauper to another asylum, or registered hospital or licensed house. *Id.* s. 77. And the visitors may discharge such lunatic, (*Id.* s. 69,) notice being given to the overseers or relieving officer, (*Id.* s. 70,) or on the undertaking of a relative to take care of the pauper. *Id.* s. 71.

*Maintenance and Removal of Pauper Lunatics. 207*

*As to Expense of Maintenance and Removal, &c. of Pauper and other Lunatics.*

<i>How, where it appears that the lunatic has property applicable to his maintenance, 207.</i>	<i>Guardians and overseers may pay charges without orders of justices, 208.</i>
<i>To what parish chargeable, 207.</i>	<i>Sending copy of order of adjudication, 208.</i>
	<i>Appeal against order of adjudication, 208.</i>

*How, where it appears that the lunatic has property applicable to his maintenance.]* Where any lunatic shall be sent to an asylum, registered hospital, or licensed house, under any order made by virtue of the authority hereinbefore given to two justices, such guardians or overseers shall be reimbursed such charges under any order to be made as aforesaid for payment of such charges, out of the property of the lunatic, unless the same be sooner repaid by some relative or friend of such lunatic, in pursuance of such application as aforesaid. *Id. s. 94.* For which purpose the lunatic's property may be sold by justice's order.

*To what parish chargeable.]* When any pauper lunatic is confined under the provisions of this Act, he shall, for the purposes of this Act, be chargeable to the parish from which, or at the instance of some officer or officiating clergyman of which; he has been sent,—unless and until such parish shall have established, under the provisions herein contained, that such lunatic is settled in some other parish,—or that it cannot be ascertained in what parish such lunatic is settled;—and every pauper lunatic who is chargeable to any parish shall, whilst he resides in an asylum, registered hospital, or licensed house, be deemed for the purposes of his settlement to be residing in the parish to which he is chargeable. *Id. s. 95.* The justice or justices of the county or borough may make an order for the expenses on the guardians of the union or parish for the charges and maintenance of the pauper. *Id. s. 96.* But the justices may at any time inquire into the last legal settlement of the pauper, and order the guardians of the union or parish of the settlement to repay such expenses to the parish from which the pauper was sent. *Id. s. 97.* If the guardians refuse to pay the expenses they may be recovered by action. *Id. s. 121.* In all cases where the pauper is settled in a parish within a union, the costs of the examination, of his removal to and from, and his maintenance in any

asylum, licensed house, or registered hospital, shall be borne by the common fund of the union. 24 & 25 Vict. c. 55, s. 6.

If the settlement cannot be ascertained the county is liable for the expenses, and the treasurer of the county is to repay the guardians such expenses. 16 & 17 Vict. c. 97, s. 98.

The county must be reimbursed the expenses of sending the pauper to the asylum by the guardians of the parish or union of the settlement when ascertained. *Id.* s. 99. Where the pauper is irremovable at the time, then the overseers or guardians of the parish from which the pauper is irremovable, or if it is in union then the guardians must charge the same to the common fund. *Id.* s. 102.

*Guardians and overseers may pay charges without orders of justices.*] Provided also, that any guardians or overseers who would be liable to have an order made upon them for the payment of any money, may pay the same without any such order being made, and may charge the same to such account as they could have done if such order had been made. *Id.* s. 103.

*Sending copy of order of adjudication.*] The overseers of any parish,—and the guardians of any union or parish,—and the clerk of the peace of any county,—obtaining any order under this Act adjudging the settlement, shall, within a reasonable time after such order, send or deliver, by post or otherwise, to the overseers or guardians of the parish in which such lunatic is adjudged to be settled, a copy or duplicate of such order,—and also a statement in writing under their or his hands or hand, or where they are the guardians of a union or parish, under the hands of any three or more of such guardians, stating the description and address of the overseers, guardians, or clerk of the peace obtaining such order,—and the place of confinement of the lunatic,—and setting forth the grounds of such adjudication, including the particulars of any settlement or settlements relied upon in support thereof;—and on the hearing of any appeal against any such order, it shall not be lawful for the respondents to go into or give evidence of any other grounds in support of such order than those set forth in such statement. *Id.* s. 107.

*Appeal against order of adjudication.*] And there is an appeal to the next quarter sessions against any order of justices adjudging the settlement. *Id.* s. 108. And the justices' clerk shall give a copy of the depositions to the appealing party. *Id.* s. 109. Notice and grounds of appeal must

be duly given. *Id.* ss. 110, 111. Where the parish of the pauper's settlement is in a union the guardians of the union shall appeal against or defend the order 24 & 25 Vict. c. 55, s. 7.

The court may amend the statement or order on terms as to costs. 16 & 17 Vict. c. 97, ss. 112—116. Or the order may be abandoned on giving notice and paying costs.

The guardians have a right of access to the pauper at all reasonable times during these proceedings. *Id.* s. 119.

The guardians of the parish chargeable must bear the expense of the pauper's burial or removal from the asylum.

*Their Duty in enabling the Poor to emigrate.*

By stat. 4 & 5 Will. 4, c. 76, s. 62, it shall and may be lawful for the ratepayers in any parish to direct that such sum or sums of money, not exceeding half the average yearly rate for the three preceding years, as the said owners and ratepayers so assembled at such meeting may think proper, shall be raised or borrowed as a fund, or in aid of any fund or contribution for defraying the expense of the emigration of poor persons having settlements in such parish, with consent of the poor law board. See stat. 7 & 8 Vict. c. 101, s. 29. Also, by stat. 11 & 12 Vict. c. 110, s. 5, the guardians of any union or parish may, with the order of the said commissioners and in conformity with such regulations as they shall make, procure or assist in procuring the emigration of any poor person rendered irremovable by stat. 9 & 10 Vict. c. 66, and chargeable, or who would, if relieved, be chargeable upon the common fund of such union, or, in the case of any parish not comprised in a union, who may, though not settled therein, be irremovable as aforesaid therefrom; and such guardians shall, in the case of a union, charge the costs and expenses incurred in such emigration upon the common fund, and, in the case of a parish not in a union, upon the monies in their hands for the relief of the poor.

And by stat. 12 & 13 Vict. c. 103, s. 20, the guardians of any union, or of any separate parish for which a board of guardians is or shall be established, may expend, with the order and subject to the rules and regulations of the poor law board, but not otherwise, any sum of money not exceeding 10*l.* for each person, in and about the emigration of poor persons having settlements in such parish, or in any parish in such union respectively, without the necessity of the ratepayers and owners of property therein meeting and giving their consent (as required by the said Act of the fifth year of King William the Fourth) to such expenditure, and such guardians

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shall charge the same to the parish of the settlement, in every case where such poor person resided therein, or was removable thereto at the time of the emigration;—provided always, that the guardian or (if more than one) a majority of the guardians of such last-mentioned parish shall express his or their concurrence in writing in the resolution of the board of guardians for such expenditure, and that such written concurrence shall be transmitted by the clerk of the union in communicating that resolution to the poor law board;—provided also, that the aggregate amount of the monies expended in the course of any one year in and about the emigration of such poor persons, shall not exceed one-half of the average yearly poor rate raised in the said parish for the three preceding years.

The poor law board in all orders sanctioning the emigration of poor persons, impose conditions as to the place to which the paupers may emigrate, and the sums of money to be provided for each emigrant.

*Their duty in binding pauper apprentices.*] By stat. 7 & 8 Vict. c. 101, s. 12, after the first day of October, 1844, no poor child shall be bound apprentice by the overseers of any parish included in any such union or subject to a board of guardians under the provisions of stat. 4 & 5 Will. 4, c. 76, but it shall be lawful for the guardians of such union or parish respectively to bind any such poor child to be an apprentice, and in such case the indentures of apprenticeship shall be executed by the said guardians, and shall not need to be allowed, assented to, or executed by any justice or justices of the peace, and the guardians shall have all the powers for binding or assigning any such apprentice which are now possessed by overseers, and shall cause all apprentices so bound or assigned by them to be registered by their clerk according to the form prescribed by the statute of the forty-second year of the reign of King George the Third, relating to the registration of parish apprentices, so far as the same may be applicable to such binding or assignment: provided always, that nothing herein contained shall directly or indirectly interfere with the provisions of any Act of parliament relating to apprentices to be bound to the sea service.

And by the same section, the poor law commissioners may, by order under their hands and seal, prescribe the duties of the masters to whom poor children may be apprenticed, and the terms and conditions to be inserted in the indentures by which such children may be so bound as apprentices; and every master of such apprentice, who wilfully refuses or neglects to perform any of such terms or conditions so inserted in any such indenture, shall be liable, upon conviction

thereof before any two justices, to forfeit any sum not exceeding 20*l*. *Id.* s. 12.

And the commissioners since, by their consolidated orders of the 24th July, 1847 (which are directed to unions only, not to parishes), have laid down various rules as to the age and condition of the child, and the circumstances, condition, and residence of the master in such cases of apprenticeship. *Con. Order*, Articles 52—69.

*Duty as to children in blind schools, &c.*] The guardians of any parish or union may, instead of maintaining a pauper child in the workhouse, send such child to a duly certified school, and pay the costs out of the funds in their possession. 25 & 26 Vict. c. 43, s. 1. For this purpose the poor law board may appoint some one to report and certify a school to be fit to receive such children, or may withdraw the certificate. *Id.* s. 2. The poor law board may order such child to be removed from the school. *Id.* s. 3. Such schools shall always be open to the inspection of a poor law inspector, or of a visitor appointed by the guardians. *Id.* s. 4. But no child is to be sent to such school unless he or she is an orphan or deserted by the parents or parent, or the parents consent; and such child shall not be kept at such school after the age of fourteen, against the will of such child, nor against the parent's will whatever be the child's age. *Id.* ss. 5, 6. The schools shall not be conducted on the principles of a religious denomination to which the child does not belong. *Id.* s. 7. The school in question shall extend to any institution established for the instruction of blind, deaf, dumb, lame, deformed, or idiotic persons, but not to a certified reformatory school. *Id.* s. 10.

The guardians of any union or parish may, if they deem proper, with consent of the poor law board, contract with the managers of any certified *industrial school* for the maintenance and education of any pauper child. 24 & 25 Vict. c. 113, s. 8. On the application of the guardians, justices of the county may discharge the child on being satisfied of the cause of withdrawal. *Id.* s. 16. See *ante*, p. 24.

*Their certificate of chargeability.*] It shall be lawful for any board of guardians or district board, at any meeting thereof, to make a certificate in the form or to the effect contained in the schedule of this Act (*vide infra*), and that every such certificate, and every copy of a minute of any order, complaint, claim, application, or authority of any such board of guardians or district board, purporting respectively to be signed by the presiding chairman of such guardians or district board, and to be sealed with their seal, and to be countersigned

by their clerk, shall, unless the contrary be shown, be taken to be sufficient proof of the truth of all the statements contained in such certificate, and of the directions respecting such order, complaint, claim, or application having been given as alleged in the copy of such minute, and shall be received in evidence accordingly by and before all courts of justice and all justices, without any proof of the signatures or of the official characters of the persons signing the same, or of such seal, or of such meeting; and that for the purpose of making any order of removal or other order, no further or other evidence of chargeability than such certificate shall be required, provided that every such order bear date within twenty-one days next after the day of the date of such certificate. 7 & 8 Vict. c. 101, s. 69.

And by stat. 11 & 12 Vict. c. 110, s. 11, such a certificate of chargeability shall be evidence thereof in all courts, and before any justice or justices, and for all purposes, for twenty-one days from the date thereof.

#### *Form of the Certificate.*

*The board of guardians of the poor of the — union [or parish of —] do hereby certify, that on the — day of —, A. B., and his wife C. B., and his child E. B., became chargeable to the parish of —, in the said union [or to the said union].*

*In testimony whereof the common seal of the said guardians is hereunto affixed at a meeting of their board, this — day of —, 18—.*

[L. S.] (Signed)

*W. J., presiding chairman of the said board.*

(Countersigned)

*C. D., clerk [or acting as clerk] to the board of guardians of —.*

*Their duty in respect to payment of county rate.]* When the justices of the peace within the respective limits of their commission have made a county rate, such justices shall order precepts to be issued to the guardians of every union of parishes, of which union any parish is situate within such limits, stating the sum or sums assessed and charged for each such rate on each parish in the union, the whole of which parish is situate within such limits, and to the guardians of every single parish situate within such limits, stating the sum or sums assessed and charged on such parish for each such rate,

and such guardians shall raise the monies required by such precepts to be paid in like manner as the money required by such guardians for the relief of the poor. 15 & 16 Vict. c. 81, s. 26.

*Their duty as to providing for vaccination.*] The guardians of every union must contract with the medical officers of their several unions or parishes respectively, or with any legally qualified medical practitioner or practitioners, for the vaccination of all persons resident in such unions or parishes respectively; and the conditions of every such contract shall be that the amount of the remuneration to be received under the same, shall depend on the number of persons who, not having been previously successfully vaccinated, shall be successfully vaccinated by the medical officers or practitioners respectively so contracting. 3 & 4 Vict. c. 29, s. 1. The rates of payment under all contracts hereafter entered into are as follows: for every person successfully vaccinated at the residence of the medical officer or practitioner, or within two miles therefrom by the nearest public road, a sum not less than 1s. 6d., and for every person successfully vaccinated at any place more than two miles distant from such residence, any sum not less than 2s. 6d. 16 & 17 Vict. c. 100, s. 6.

The guardians, subject to the approval of the poor law board, must divide the parish or union, if need be, into convenient districts for the purpose of affording increased facilities for the vaccination of the poor, and appoint a convenient place in each district for the performance of such vaccination, and take the most effectual means for giving, from time to time, to all persons resident within the district due notice of the days and hours at which the medical officer or practitioner, contracted with for such purpose, will attend at such place to vaccinate all persons not already successfully vaccinated who may then appear there, and also of the days and hours at which such medical officer, &c., will attend at such place to inspect the progress of such vaccination in the person so vaccinated. *Id.* s. 1. In addition to the fee to the public vaccinator, the guardians must pay a fee of 3d. to the registrar of births and deaths for each case of vaccination which he may register, in compliance with the provisions of the Act, sect. 10. Vaccination at the cost of the poor rates is, by 4 & 5 Vict. c. 32, s. 2, declared not to be relief, and persons inoculating or otherwise producing small pox, are liable to one month's imprisonment. 3 & 4 Vict. c. 29, s. 8. The guardians of any union or parish or the overseers may appoint some one to enforce the acts, and all costs incurred by the

officers are payable out of the rates of the parish where the party in fault dwells. 24 & 25 Vict. c. 59, s. 2.

*Their duty in protecting young servants.*] By stat. 14 & 15 Vict. c. 11, (which renders the master or mistress of an apprentice or servant, who is legally liable to an indictment as for a misdemeanor, if they refuse or neglect to provide the same, or if they unlawfully and maliciously assault him, whereby his life shall be endangered, or whereby his health shall be, or is likely to be, permanently injured,)—it is enacted by sect. 6, that where any complaint shall be made of an offence against this Act,—or of any bodily injury inflicted upon any poor person under the age of sixteen years, for which the party committing it is liable to be indicted, and the circumstances of which offence amount in point of law to a felony, or an attempt to commit a felony, or an assault with intent to commit a felony,—and two justices of the peace before whom the examination is taken, shall certify under their hands that they deem it necessary for the purposes of public justice that the prosecution should be conducted by the guardians of the union or of the parish, or, where there are no guardians, by the overseers of the parish in which the offence shall have been committed,—such guardians or overseers, as the case may be, shall, upon personal service of such certificate or a duplicate thereof upon the clerk of such guardians, or upon any one of such overseers, conduct the prosecution, and shall pay the costs reasonably and properly incurred by them therein (so far as the same shall not be allowed to them under any order of the court trying the indictment, or the court of Queen's Bench), out of the common fund of the union, or out of the funds in the hands of the guardians or overseers (as the case may be) of such parish.

And by sect. 7, in the case of a union or parish under a board of guardians, the clerk or some other officer of such union or parish, and in the case of a parish not under a board of guardians one of the overseers thereof, may, if such two justices before whom the examination is taken shall deem it necessary for the purposes of public justice, and shall certify as hereinbefore mentioned, be bound over to prosecute.

*Their Duty in respect to the Removal of Irish and Scotch Paupers.*

By stat. 8 & 9 Vict. c. 117, s. 2, "if any person born in Scotland or Ireland, or in the Isle of Man, or Scilly, or Jersey,

or Guernsey, not settled in England, become chargeable to any parish in England by reason of relief given to himself or herself, or to his wife, or to any legitimate or bastard child,—such person, his wife, and any child so chargeable, shall be liable to be removed respectively to Scotland, Ireland, the Isle of Man, Scilly, Jersey, or Guernsey; and if the guardians of such parish, or of any union in which the same may be comprised, or, where there are no such guardians, if the overseers of such parish complain thereof to any one justice of the peace, such justice may, if such person do not attend voluntarily, summon him to come before any two justices of the peace, at any time and place to be named in the summons; and at such time and place, or on the attendance of such person, any two justices may hear and examine into the matter of such complaint [or, any guardian, relieving officer, or overseer of any parish or union in England, may take and convey before two justices of the peace, without summons or warrant, every poor person who shall become chargeable to any parish in England, and who he may have reason to believe is liable to be removed from England under the above Act (10 & 11 Vict. c. 33, s. 1)]; and if it be made to appear to their satisfaction, that such person is liable to be so removed as aforesaid, and if they see fit, they may make and issue a warrant under their hands and seals to remove such person forthwith at the expense of such union or parish." Before the warrant is granted the justices must see the pauper, or the head of the pauper's family, so as to judge of the fit state of health for removal. 25 & 26 Vict. c. 113, s. 1.

The wife must be removed with the husband, even although she have a maiden settlement in England. *R. v. Leeds*, 4 B. & A. 498. And the children, unemancipated, must be removed with the parent, although they have been born in England. *R. v. Mile End Old Town*, 4 Ad. & El. 196.

Regulations for carrying the Act into effect are made by the justices of each county, &c., and approved of by the secretary of state, stating whether the paupers are to be sent by sea or land, or partly by sea and partly by land, and at what port or place they are to be left. These regulations are indorsed on the warrant, before it is delivered to the overseer for execution; and the removal must be strictly in accordance with them. 8 & 9 Vict. c. 117. 10 & 11 Vict. c. 33. 25 & 26 Vict. c. 113. The Irish board of guardians may appeal against the removal order. 26 & 27 Vict. c. 89, s. 7. Persons so taking paupers before justices, shall have all the rights, privileges, powers, and immunities of constables. 10 & 11 Vict. c. 33, s. 3.

*Their clerk.*] By the consolidated order of the poor law commissioners, 24th July, 1847, Art. 153, the guardians of every union shall appoint a clerk. And, by stat. 7 & 8 Vict. c. 101, s. 68, it is enacted that notwithstanding anything contained in stat. 6 & 7 Vict. c. 73, as to attornies, it shall be lawful for any clerk or other officer to any board of guardians, constituted under the said first-recited Act or under any local Act, or to any district board, if duly empowered by such board, to make or resist any application, claim, or complaint, or to take and conduct any proceedings on behalf of such board, before any justice or justices of the peace, at petty or special sessions, or out of sessions, although such clerk or officer be not an attorney or solicitor, or have not obtained a stamped certificate in pursuance of the provisions of the said Act.

By the consolidated order of the commissioners, 24th July, 1847,—

*Art. 202.* The following shall be the duties of the clerk :—

No. 1. To attend all meetings of the board of guardians, and to keep punctually minutes of the proceedings at every meeting, to enter the said minutes in a book, and to submit the same so entered to the presiding chairman at the succeeding meeting for his signature.

No. 2. To keep, check, and examine all accounts, books of accounts, minutes, books, and other documents, as required of him by the regulations of the commissioners, or relating to the business of the guardians, and from time to time to produce all such books and documents, together with the necessary vouchers and the bonds of any officers, with any certificates relating thereto which may be in his custody, to the auditor of the union, at the place of audit and at the time and in such manner as may be required by the regulations of the commissioners.

No. 3. To peruse and conduct the correspondence of the guardians according to their directions, and to preserve the same, as well as all orders of the commissioners, and letters received, together with copies of all letters sent, and all letters, books, and papers, and documents belonging to the union, or intrusted to him by the guardians, and to make all necessary copies thereof.

No. 4. To prepare all written contracts and agreements to be entered into by any parties with the guardians, and to see that the same are duly executed, and to prepare all bonds or other securities to be given by any of the officers of the union, and to see that the same are duly executed by such officers and their sureties.

No. 5. To receive all requisitions of guardians for extraordinary meetings, and to summon such meetings accordingly; and to make, sign, and send all notices required to be given to the guardians by this or any other order of the commissioners.

No. 6. To countersign all orders legally made by the guardians on overseers for the payment of money, and all orders legally drawn by the guardians upon the treasurer.

No. 7. To ascertain, before every ordinary meeting of the board, the balance due to or from the union, in account with the treasurer, and to enter the same in the minute book.

No. 8. At the first meeting of the guardians in each quarter, to lay before the guardians, or some committee appointed by them, the non-settled poor account, and the non-resident poor account, posted in his ledger to the end of the preceding quarter, and to take the directions of the guardians respecting the remittance of cheques or post-office orders to the guardians of any other union or parish, or the transmission of accounts due from other unions or parishes, and requests for payment.

No. 9. Within fourteen days from the close of each quarter, to transmit by post all accounts of relief administered in the course of the preceding quarter to non-settled poor, to the guardians of the unions and parishes on account of which such relief was given; and to state in every account so transmitted the names and classes of the several paupers to whom the relief in question has been administered.

No. 10. To communicate to the several officers and persons engaged in the administration of relief within the union, all orders and directions of the commissioners, or of the guardians; and so far as may be, to give the instructions requisite for the prompt and correct execution of all such orders and directions, and to report to the guardians any neglect or failure therein which may come to his knowledge.

No. 11. To conduct all applications by or on behalf of the guardians to any justice or justices at their special, petty, or general sessions; and, if he be an attorney or solicitor, to perform and execute all legal business connected with the union, or in which the guardians shall be engaged, except prosecutions at the assizes, actions at law, suits in equity, or parliamentary business, without charge for anything beyond disbursements.

No. 12. To prepare and transmit all reports, answers, or returns, as to any question or matter connected with or relating to the administration of the laws for the relief of the poor in the union, or to any other business of the union, which are required by the regulations of the commissioners, or which the



commissioners, or any assistant-commissioner, may lawfully require from him.

No. 13. To conduct duly and impartially, and in strict conformity with the regulations in force at the time, the annual or any other election of guardians.

No. 14. To observe and execute all lawful orders and directions of the guardians applicable to his office.

The clerk to the guardians was entitled to the first appointment of superintendent registrar of births, &c., in his district, but not to the appointment on subsequent vacancies. *R. v. Acason*, 26 J. P. 436.

## 2. GUARDIANS OF THE POOR FOR SINGLE PARISHES.

If the commissioners shall, by any order under their hands and seal, direct that the administration of the laws for the relief of the poor of any single parish should be governed and administered by a board of guardians, then such board shall be elected and constituted, and authorized and entitled to act, for such single parish, in like manner in all respects as is hereinbefore enacted and provided in respect to a board of guardians for united parishes; and every justice of the peace resident therein [or in any extra-parochial place, the boundary line of which, or the greater part of the boundary line of which is included within or coincident with the boundary line of such parish, 7 & 8 Vict. c. 101, s. 24], and acting for the county, riding, or division in which the same is situated, shall be and may act as an *ex officio* member of such board. 4 & 5 Will. 4, c. 76, s. 39. See *R. v. Poor Law Comm.* 6 Ad. & El. 1.

And in every case in which a parish in which guardians are to be elected under the provisions of the said first-recited Act contains more than 20,000 persons according to the enumeration of the population then last published by authority of parliament, it shall be lawful for the said commissioners, by order under their hands and seal, for the purpose of conducting the election of guardians, to divide such parish into such and so many wards as they may deem expedient, so that no such ward shall contain a number of rated houses less than 400, and to determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein; and each such ward shall, for the purpose of every election of guardians, so far as the said commissioners may direct, be considered as a separate parish. 7 & 8 Vict. c. 101, s. 19.

The guardians of wards shall have the same qualification as guardians of parishes; but no person shall be elected for more wards than one, or if he be nominated for more, he shall elect for which he will stand. *Id.* s. 20. Votes must be in respect of property in the ward; and a party having property in more than one ward, may, by notice, elect in which ward he will vote, and in default of such notice he shall vote only in that ward in which he resides. *Id.* s. 21.

The duties and functions of a board of guardians established for a single parish, are precisely similar to those of boards of guardians for unions of parishes, and therefore need not be repeated at this place.

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### 3. GUARDIANS UNDER LOCAL ACTS, &c.

By stat. 7 & 8 Vict. c. 101, s. 64, the guardians of every parish or union acting under any local Act for the relief of the poor, shall hold their meetings once in every fortnight, or oftener, and in all matters concerning the relief of the poor shall act as a board at a meeting, and not individually; and whenever under any such local Act there is no person particularly designated or authorized to act as chairman, such guardians shall elect and appoint annually, and from time to time, as vacancies may occur, a chairman and vice-chairman of such board, and shall at any meeting at which no chairman or vice-chairman is present elect a temporary chairman to preside at that meeting: provided always, that when the relief of the poor has been hitherto administered in any parish by guardians appointed under a local Act, and not by overseers of the poor, if such parish, according to the last enumeration of the population published by authority of parliament, contain more than 20,000 persons, it shall not be lawful for the said commissioners, after the passing of this Act, without the consent in writing of two-thirds at least of such guardians, to declare such parish to be united with any other parish for the administration of the laws for the relief of the poor, anything in the said first-recited Act to the contrary notwithstanding.

By stat. 11 & 12 Vict. c. 91, s. 12, after reciting that in certain parishes and unions wherein the relief of the poor is administered by guardians or other competent authorities under the provisions of particular statutes or local Acts applicable thereto, doubts have been entertained whether any poor person can be relieved by such guardians or other authorities out of the workhouses belonging to such parishes and unions

respectively, and it is expedient to remove such doubts, and to give authority for such relief out of the workhouses:—it is enacted, that in all cases where the relief of the poor is administered in any parish or union under the provisions of any local Act, it shall be lawful for the guardians or other competent authority, administering the relief to the poor in any such parish or union, if they think fit, to administer such relief in all respects in like manner and with the like powers and authorities as any board of guardians of a union formed under the provisions of stat. 4 & 5 Will. 4, c. 76, is now or shall hereafter be authorized to do: provided always, that the cost of all such relief so given or to be given shall be charged among the parishes in the same union in like manner and in like proportion as the relief heretofore or hereafter to be given in the workhouse of such parish or union is now or shall hereafter be chargeable.

The provisions of the 22 Geo. 3, c. 83, (Gilbert's Act,) being now for the most part obsolete, and as regards the administration of relief, as well as otherwise, impracticable, are omitted from this work. At the present time there are only a very few parishes which remain subject to the provisions of Gilbert's Act.

# HIGHWAYS.

1. *Highway Rate*, 221.
2. *Surveyors of the Highways*, 224.

## 1. HIGHWAY RATE.

<i>By whom and how made</i> , 221.	<i>What persons excused</i> , 222.
<i>Form and amount</i> , 221.	<i>Rates, how recovered</i> , 222.
<i>Errors in it, how rectified</i> , 222.	<i>Composition for rates</i> , 222.
	<i>Appeal against a rate</i> , 223.

*By whom and how made.*] In order to raise money for carrying the several purposes of this Act into execution, a rate shall be made, assessed, and levied by the surveyor upon all property now liable to be rated and assessed to the relief of the poor; and upon such woods, mines, and quarries of stone, or other hereditaments, as have heretofore been usually rated to the highways; such rate to be signed by the said surveyor and allowed by two justices of the peace, and published in the same way as poor rates are now allowed and published. 5 & 6 Will. 4, c. 50, s. 27. The words "usually rated" here mean merely such woods, &c., as have usually been rated in the particular parish, and not whether such woods were rateable, or whether they were usually rated in other parishes. *R. v. Rose*, 13 Law J. 155, m.; 6 Q. B. 153. And for this purpose the surveyor may, at all reasonable times, inspect, or by writing signed by him grant authority to any person to inspect, the poor rates of the parish of which he is surveyor, or the books of assessments thereto, and make copies thereof, or extracts therefrom; and if any person in whose custody or power the said rates or books shall be, shall when thereunto required, refuse or neglect to produce the same to the surveyor, or person so by him authorized as aforesaid, or to allow such copy or extract to be made, or taken, at all reasonable hours in the daytime, he shall for every such offence forfeit and pay any sum not exceeding 5*l*. 5 & 6 Will. 4, c. 50, s. 28.

*Form and amount.*] Every rate shall contain the names of the occupiers, the description of the property they occupy, and the full annual value thereof, and shall also specify the

sum in the pound at which it is made; and no such rate shall exceed at any one time the sum of 10d. in the pound, or the sum of 2s. 6d. in the pound in the whole in any one year, unless with the consent of four-fifths of the rate-payers assembled at a meeting specially called for that purpose. *Id.* s. 29.

*Errors in rate, how rectified.*] If there be any omission or error in the rate, in the name of any person, tenement, &c., liable to be rated, the surveyor, with the approbation of the justices at a special sessions for the highways, may cause to be added or corrected in the said rate the name of the person omitted or erroneously stated, and a description of the property in respect of which he ought to be rated; which, being signed by such justices, shall be as effectual as if the same had originally been part of the rate. *Id.* s. 31.

*What persons excused.*] The justices at a special sessions for the highways, on application made to them by any person rated to any rate under the authority of this Act to be discharged therefrom, may, on proof of his inability through poverty to pay such rate (the surveyor having been first summoned to appear on the part of the parish), order that such person shall be excused from the payment of such rate. *Id.* s. 32. Property which, previous to the passing of this Act, has been legally exempt from the performance of statute duty, or from the payment of composition in lieu thereof, or of highway rate, shall be exempt from the payment of the rate hereby imposed. *Id.* s. 33. Sometimes farms have enjoyed exemption from a rate, but in general they are not entitled to it unless there is a distinct parish officer to attend to the repairs there; *E. v. Freeman*, 23 J. P. 808; *Great Western Railway Company v. Denchworth*, 25 J. P. 342; or the farms constitute an ancient tithing. *E. v. Freeman*, 32 L. J. 226, M. C. And if a warrant is issued to enforce a rate against a person exempt, the surveyor is liable to an action. *Id.*

*Rates, how recovered.*] And for levying and recovering the said rate, the surveyor shall have the same powers, remedies, and privileges, as the overseers of the poor in the parish have by law for the recovery of any rate made for the relief of the poor. 5 & 6 Will. 4, c. 50, s. 34. See *Morrell v. Martin*, 11 Law J. 22, m. *Charrinton v. Johnson*, 14 Law J. 299. See *post*, tit. "Overseers of the Poor."

*Composition for rates.*] In parishes in which the overseers of the poor have power, by local Acts of Parliament, to compound with or require composition for poor rates from the land.

lords of certain tenements, &c., and, in case of refusal to compound, to rate such landlords as the occupiers, the surveyor shall have the same powers, remedies, and privileges as to the rates authorized to be made by this Act. *Id.* s. 30.

*Appeal against a rate.*] If any person shall think himself aggrieved by any rate made under or in pursuance of this Act, or by any order, conviction, judgment, or determination made, or by any matter or thing done, by any justice or other person, in pursuance of this Act, and for which no particular method of relief hath been already appointed, such person may appeal to the justices at the next general or quarter sessions of the peace to be held for the county, division, riding, or place wherein the cause of such complaint shall arise,—such appellant first giving to the surveyor, or to such justice or other person by whose act such person shall find himself aggrieved, notice in writing of his intention to bring such appeal, together with a statement in writing of the grounds of such appeal, within fourteen days after such rate shall be made, or cause of complaint shall arise,—and within four days after such notice, entering into a recognizance before some justice, with two sufficient sureties, conditioned to try such appeal at and abide the order of, and pay such costs as shall be awarded by the justices at such general or quarter sessions; and such justices upon hearing and finally determining the matter of such appeal, may, according to their discretion, award such costs to the party appealing or appealed against, as they shall think proper; but in case there shall not be time to give such notice and enter into such recognizance before the next sessions, then such appeal may be made to the next following sessions, and shall be then heard and determined: provided also, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor, on the hearing of such appeal, to go into evidence of any other grounds of appeal than those set forth in such statement. 5 & 6 Will. 4, c. 50, s. 105. And in all cases of appeal against the rate made in pursuance of this Act, the several provisions and enactments contained in stat. 41 Geo. 3, c. 23, relative to poor rates, shall be applicable thereto, as if the same had been repealed and re-enacted in this Act. *Id.* s. 106. But no rate, nor any proceeding to be had touching the conviction of any offender against this Act, or any order made, or any other matter or thing done or transacted in or relative to the execution of this Act, shall be vacated or quashed for want of form, or be removable (except as herein mentioned) by *certiorari*, or any other writ or process whatsoever, into any of His Majesty's courts of record at Westminster. *Id.* s. 107. In any case of appeal, however, the

court of quarter sessions may, if they think fit, state the facts specially for the determination of the court of King's Bench thereon, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said court of King's Bench. *Id.* s. 108.

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## 2. SURVEYORS OF THE HIGHWAYS.

1. *Appointment of Officers for the Repair, &c., of Highways*, 224.
2. *Their Duties*, 229.
3. *Penalties for Neglect of Duty*, 255.

1. *Appointment of Officers for the Repair, &c. of Highways*.

<i>Surveyors for single parishes</i> , 224. <i>Highway boards</i> , 225.	<i>District surveyor</i> , 227. <i>New highway districts</i> , 227.
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*Surveyors for single parishes, &c.*] The inhabitants of every parish maintaining its own highways, at their first meeting in vestry for the nomination of overseers of the poor in every year, shall proceed to the election of one or more persons to serve the office of surveyor in the said parish for the year then next ensuing; and in such case notice of such election shall be given by the chairman to the person elected and to the outgoing surveyor: provided always, that in any parish where there is no meeting in the year for the nomination of overseers of the poor, the inhabitants contributing to the highway rate shall meet at their usual place of public meeting upon the 25th of March or within fourteen days afterwards, in every year, to elect one or more persons to serve the office of surveyor for the said parish. 5 & 6 Will. 4, c. 50, s. 6. An inhabitant liable to be, though never actually assessed to the highway rate, is entitled to vote. *R. v. Kershaw*, 26 L. J. 45, Q. B. If any person so chosen and elected, shall refuse or neglect to take upon himself the office of surveyor, or to provide a sufficient deputy, to be approved of, he shall forfeit, on conviction before any two justices of the peace, any sum not exceeding 20*l.*, unless he can show to the said justices good and sufficient cause why he should not be called upon to serve

the said office. 5 & 6 Will. 4, c. 50, s. 8. And every deputy provided and approved of as above mentioned, shall have the same powers and authorities, and be subject to the discharge of the same duty, and be liable to the same penalties, as any surveyor appointed under the authority of this Act. *Id.* s. 8. But if it shall appear on oath to the justices at a special sessions for the highways, that the inhabitants of any parish have neglected or refuse to nominate and elect a surveyor, or that the outgoing surveyor (except he had been directed by the inhabitants so to do), has delivered no statement of the name and residence of his successor, or that the surveyor is dead, or has ceased to possess the qualifications, or is or has become disqualified in any manner herein mentioned, or that he has neglected to act, or refused to carry into operation the duties imposed upon him by this Act: it shall and may be lawful for such justices, and they are hereby authorized and required by writing under their hands, at their next succeeding special sessions for the highways, to dismiss such surveyor so neglecting to act or refusing to carry into operation the duties imposed upon him by this Act, and to appoint any person whom they may think fit to be a surveyor for such parish till the annual meeting then next ensuing for the nomination of overseers or for the election of surveyors as aforesaid, and with or without such salary, as to the said justices shall seem fit and proper. *Id.* s. 11. And when a parish is situate in more than one county, division, or liberty, the surveyor so to be appointed as last aforesaid shall be appointed by the justices at a special sessions for the highways assembled in that county, division, or liberty in which the church of the said parish shall be situate. *Id.* s. 12. As to the qualification of surveyor:—Any person living within the parish, or any adjoining parish, and having an estate in houses, lands, or hereditaments lying within such parish, in his own right or in right of his wife, of the value of 10*l.* by the year, or a personal estate of the value of 100*l.* (such person not living within the parish being willing to serve the office), or being an occupier or tenant of houses, lands, tenements, or hereditaments (whether resident within the parish or any adjoining parish) of the yearly value of 20*l.*, shall be eligible to be elected a surveyor for the purposes of this Act: provided nevertheless that no person that is now exempted by law from serving the office of overseer of the poor, shall be compellable to serve the office of surveyor. *Id.* s. 7.

*Highway boards.*] Whereas it is expedient in large and populous parishes, that the repairs of the highways should be under the direction and control of a certain number of inhabitants, to be chosen and appointed as a board for that pur-



pose, with necessary powers; it is enacted, that in any parish [see *R. v. Bush*, 9 Ad. & El. 820; 8 Law J. 39, m.] where the population by the then last census, taken from the returns made to parliament, exceeds the number of 5,000, if it shall be determined by a majority of two-thirds of the votes of the vestrymen present at such meeting as aforesaid, (subject to a poll being demanded, *R. v. How*, 27 J. P. 773,) to form a board for the superintendence of the highways of the said parish, and for the purpose of carrying the provisions of this Act into effect, the said vestry may nominate and elect any number of persons, not exceeding twenty nor less than five, being respectively householders and residing in and assessed to the rate for the relief of the poor of the said parish, and also liable to be rated to the repair of the highways in the said parish under and by virtue of this Act, to serve the office of surveyors of the highways for the year ensuing; and such persons so to be nominated and elected as such surveyors, or any three of them, shall and are hereby authorized to act as a board, and to be called "the board for repair of the highways in the parish of ——" (as the case may be), and to carry into effect the powers, authorities, and directions in this Act contained. 5 & 6 Will. 4, c. 50, s. 18. And upon such board being so nominated and elected, all the powers and authorities given and created by this Act, and granted to or vested in the vestry, and in any person as surveyor, shall, for the purposes of the parish so nominating and electing such board, be vested in the persons so elected, or any three of them acting as such board as aforesaid. *Id.* s. 18.

And such board may rent, or with the consent of the vestry of any parish may purchase, fit premises for the keeping of the implements and materials necessary for the reparation of the highways, and may direct how and in what manner the highways in the said parish shall be curbed or paved with stone or otherwise. *Id.* s. 19.

Such board may appoint a collector or any number of collectors of the rates, and also employ a person of skill and experience to act as an assistant surveyor to the said board, and also a clerk to attend the said board, and to keep the accounts and minutes of the proceedings thereof; such assistant surveyor and clerk to be paid such reasonable salaries out of the said rates as the said board shall determine. *Id.* s. 18.

And such persons or any three of them, at a meeting to be convened for that purpose, may nominate and appoint a fit and proper person to be treasurer. *Id.* s. 18.

Upon the expiration of the year for which such board shall be elected, and before and on the day for the nomination and election of persons as surveyors under the authority of this

Act, the said board shall present to the vestry of the parish for which they shall have acted, copies of all their accounts and also of the minutes of their proceedings during the preceding year. *Id.* s. 18.

*District surveyor.*] By the 5 & 6 Will. 4, c. 50, ss. 18, 37, several parishes might agree to form one district for the purpose of having one paid surveyor for the whole parishes, and the justices at quarter sessions were empowered to unite the parishes and appoint a fit person to be such surveyor, subject to any of the parishes giving a notice to determine the union. Each of the parishes was to appoint a surveyor to collect the rate and hand it over to the district surveyor. *Id.* 17.

*New Highway Districts.*

<i>Formation of highway districts, 227.</i>	<i>Repair of highways, 228.</i>
<i>Appointment of officers, 228.</i>	<i>Occupation roads, 228.</i>

*Formation of highway districts.*] By the recent Highway Districts Act, 25 & 26 Vict. c. 61, power was given to the justices at quarter sessions to form certain separate districts out of the county. A preliminary notice was to be given, on the requisition of five justices, by the clerk of the peace to the churchwardens or overseers of the parishes proposed to be included in the district. *Id.* s. 5. And certain regulations were laid down as to the mode of deciding upon and ultimately constituting such districts. *Id.* s. 6. When the districts are formed a certain number of waywardens are to be appointed; not less than one for each parish. *Id.* s. 6. There shall not be included in such new district any of the South Wales highways regulated by 23 & 24 Vict. c. 68; nor any parish or place already under a highway board created by 5 & 6 Will. 4, c. 50, s. 18, unless with consent of such board. *Id.* s. 7. The highway board shall consist of the waywardens elected in the several places within the district and of the justices residing within the district. *Id.* s. 9. In every parish one or more waywardens are to be appointed in the same manner as a surveyor would otherwise be chosen. *Id.* s. 10. No waywarden is allowed to be concerned in any contract relating to the roads of his parish under a penalty of 10*l.*; and the highway board may recover back money paid on such a contract. 26 & 27 Vict. c. 61, ss. 1, 2. The highway board when constituted is to have all the powers of a surveyor except the powers of making, assessing, and levying highway

rates. 25 & 26 Vict. c. 61, s. 11. And a surveyor shall cease to be appointed in the parishes of a district after it is formed. *Id.* s. 43.

*Appointment of officers.*] The highway board of a district shall appoint a treasurer, clerk, and district surveyor, and, if expedient, an assistant surveyor also. *Id.* s. 12. The clerk shall attend the meetings and keep the books. *Id.* s. 15. The district surveyor shall act as the agent of the board in carrying into effect all the works and performing all the duties required by the board, and the assistant surveyor shall act under the surveyor. *Id.* s. 16.

*Repair of highways.*] The highway board shall keep the highways of the district in repair in the same manner as the surveyor of a parish is bound to do so, and with the same powers, and liable to the same legal proceedings. *Id.* s. 17. Where complaint is made to any justice of the peace that the highway is out of repair two summonses shall issue, one to the board and the other to the waywarden of the parish, and unless the board undertake the repair, or the waywarden deny the liability to repair, the justices may order some competent person to inspect and report as to the highway, and if satisfied that it is out of repair may appoint some one to do the repairs at the expense of the board. *Id.* s. 18. If the obligation to repair is disputed the justices shall direct an indictment against the inhabitants of the parish, and the costs of the prosecution shall be paid by such party as the court shall direct. *Id.* s. 19. The common expenses of officers' salaries shall be distributed among the parishes according to the average expenditure during the last three preceding years incurred by each parish. *Id.* s. 20. The mode of obtaining payment from the parishes is by the board issuing precepts stating the sum to be contributed by each parish, and requiring the overseers to pay the same within a time limited, provided that no contribution at one time shall exceed 10*d.* in the pound, or in any one year in the aggregate shall exceed 2*s.* 6*d.* in the pound, except by consent of four-fifths of the rate-payers. *Id.* s. 21. The overseers are to levy the sums mentioned in the precept in the same way as rates for the relief of the poor. *Id.* s. 23. The accounts are to be made up to 25th March in each year. *Id.* s. 25. If a rate-payer or a waywarden is of opinion that too large an amount has been charged to his parish, he may appeal to the quarter sessions. *Id.* s. 26.

*Occupation roads.*] Where the inhabitants of any parish are desirous of undertaking the repair of any driftway, or any

private or occupation road, the district surveyor may, at the request of the inhabitants in vestry convened, and with the consent of the owner or occupier, apply to the justices in petty sessions to declare such driftway or road to be a public highway, to be repaired at the expense of the parish. *Id.* s. 36.

*2. The Duties of Surveyor.*

- To repair the Highways, 229.*
- To widen Highways, 239.*
- To stop up or divert Highways, 240.*
- To erect Direction Posts, 245.*
- To remove Snow or other Obstructions, 245.*
- To prosecute for Nuisances, 245.*
- To account, deliver up Books, &c., 253.*

*Duty of Surveyor to repair Highways.*

<i>Duty to repair, 229.</i>	<i>Repairs, how compelled by the petty sessions, 233.</i>
<i>Materials purchased, 229.</i>	<i>Repairs, how compelled by indictment, 236.</i>
<i>Materials from waste lands, 230.</i>	<i>Width of highways, 236.</i>
<i>Materials from inclosed lands, 231.</i>	<i>Width of gates, 236.</i>
<i>Damage in getting materials, 232.</i>	<i>Way whilst highway repairing, 237.</i>
<i>Penalty for taking away materials, 233.</i>	<i>Parish, how compelled to contribute to repair of turnpike roads, 237.</i>

*Duty to repair.*] The surveyor shall repair and keep in repair the several highways in the said parish for which he is appointed, and which are now or hereafter may become liable to be repaired by the said parish. 5 & 6 Will. 4, c. 50, s. 6. And he is not personally liable to strangers who suffer injury from the want of repair. *Young v. Davis*, 7 H. & N. 760.

*Materials purchased.*] In every parish, the surveyor may, with the consent of the inhabitants in vestry, contract for purchasing, getting, and carrying the materials required for the repair of the highway; and if any surveyor shall have any part, share, or interest, directly or indirectly, in any contract or bargain for work or materials to be made, done, or provided, upon, for, or on account of any of the highways or other works whatsoever under his care or management, or shall upon

his own account, directly or indirectly, use or let to hire any team, or use, or sell, or dispose of any materials, to be used or employed in making or repairing such highway or other works as aforesaid (unless a licence in writing for the sale of such materials, or to let to hire any such team, be first obtained, from two justices of the peace in special sessions assembled), he shall forfeit for every such offence, on conviction, any sum not exceeding 10*l.*, and be for ever after incapable of being employed as a surveyor with a salary under the authority of this Act. *Id.* s. 46.

And two ratepayers of any parish, within six days next after the annual appointment of the surveyor, by a notice in writing, may require him to call a meeting of the ratepayers for the purpose hereinafter mentioned, and he shall call such meeting accordingly; and if at such meeting a majority of the ratepayers shall signify their consent, it shall be lawful for the ratepayers keeping a team or teams of two or more horses or beasts of draught, to divide amongst themselves, in proportion to the amount of rate to which they may respectively be assessed, the carrying of the material which may be required by the said surveyor for the repairs of the highways, and they shall be paid by the said surveyor for such carrying or task work, within one calendar month after having performed such service, after such rate per cubic yard of material per mile, as shall be fixed by the justices at their first meeting in special sessions for the highways after the twenty-fifth day of March in every year, which rate the said justices are hereby required to fix at such special sessions: such carrying to be performed at such times, &c., as the surveyor may direct (spring, seed-time, and harvest excepted): and in case the surveyor shall not approve of the manner in which such carrying shall be performed, the justices at a special sessions for the highways may hear the complaint of such surveyor in that respect, and award such pecuniary redress or forfeiture against the party offending as to them shall appear reasonable. *Id.* s. 35.

*Materials from waste lands.*] Every surveyor, in any waste lands or common ground, river or brook, within the parish for which he shall be surveyor, or within any other parish wherein gravel, sand, stone, or other materials are respectively likely to be found (in case sufficient cannot be conveniently had within the parish where the same are to be employed, and sufficient shall be left for the use of the roads in such other parish), may search for, dig, get, and carry away the same, and likewise may gather stones lying upon any lands or grounds within the parish for such purpose, without making any satisfaction for the said materials; but satisfaction shall be made for all damages done to the lands of

any person by carrying away the same, in the manner herein-after directed for getting and carrying materials in inclosed lands; but no such stones shall be gathered without the consent of the owner of such lands, or a licence for that purpose from two justices at a special sessions for the highways, after having summoned such owner to come before them and heard his reasons (if he shall appear and give any) for refusing his consent. *Id.* s. 51.

But this is not to extend to stones or other materials thrown up by the sea, commonly called beach, where the removal of the same would cause any damage or injury by inundation to the lands adjoining, or increased danger of encroachment by the sea. *Id.* s. 52.

As to the allotment of lands, for supplying materials for the repair of highways, upon the inclosure of waste lands, &c., see stat. 8 & 9 Vict. c. 118, s. 72. And where land shall have been allotted to parishes for the purpose of obtaining materials for the repair of the highways therein, and the materials in such land shall be exhausted, the surveyor of such parish may, with the consent of the vestry, and he shall with the consent in writing of the justices of the peace at a special sessions for the highways, sell and convey to some person whose lands adjoin thereto, or, if he refuse to purchase, to any other person, the said land, at and for such prices as the said justices may deem fair and reasonable; and with the money arising therefrom, with such consent as aforesaid, shall purchase other lands in lieu thereof. *Id.* s. 48. And the same, as to all lands belonging to a parish, for the purpose of obtaining materials for the repair of the highways, and which have been used for that purpose, as soon as the materials are exhausted. 8 & 9 Vict. c. 118, s. 71.

*Materials from inclosed lands.]* Every such surveyor may, for the use aforesaid, by licence in writing from the justices at a special sessions for the highways, search for, dig, and get materials (if sufficient cannot be had conveniently within such waste lands, common grounds, rivers, or brooks), in or through any of the several or inclosed lands or grounds of any person whomsoever (such lands or grounds not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation, or inclosed wood not exceeding 100 acres in extent), within the parish where the same shall be wanted,—or within any other parish adjoining or lying near to the highway for which such materials shall be required, if it shall appear to such justices that sufficient materials cannot be conveniently had in the parish where such highways lie,—or in the waste lands, or common grounds, rivers or brooks of such adjacent parish—and that a sufficient quantity of materials will be left

for the use of the parish where the same shall be; the said surveyor making such satisfaction for the materials which may be got or taken away, and also for the damage done to such lands by the getting or carrying away the same, as shall be settled and ascertained by order of the justices at a special sessions for the highways. 5 & 6 Will. 4, c. 50, s. 54. And lands, in the exclusive occupation of any one or more persons for agricultural purposes, shall be deemed to be inclosed lands within the meaning of stat. 5 & 6 Will. 4, c. 50, ss. 53, 54, as to obtaining materials for highways, and of a similar section of stat. 3 Geo. 4, c. 126, as to turnpike roads. 4 & 5 Vict. c. 51. *Tapsall v. Crosskey*, 7 Mees. & W. 441.

But no surveyor or other person shall dig, gather, get, take, or carry away any materials for making or repairing any highway, out of any inclosed land, until one calendar month's notice in writing, signed by the surveyor, shall have been given to the owner of the premises, or to his known agent, and to the occupier thereof, or left at the house or last or usual place of abode of such owner or agent, and occupier, to appear before the justices at a special sessions for the highways, to show cause why such materials shall not be had therefrom. 5 & 6 Will. 4, c. 50, s. 53.

*Damage in getting materials.]* And if any surveyor shall dig or cause to be dug materials for the highways whereby any bridge, mill, building, dam, highway, occupation road, ford, mines, or tin works, or other work, may be damaged or endangered, he shall forfeit for every such offence, on conviction, any sum not exceeding 5*l.*, at the discretion of the justices before whom the complaint thereof shall be made, notwithstanding his liability to any civil action to which he may make himself liable by such act. *Id.* s. 57. Or, if any surveyor or person employed by him shall, by reason of the searching for, digging, or getting any materials for repairing any highways, make any pit or hole in lands, &c. wherein such materials shall be found, he shall forthwith cause the same to be sufficiently fenced off,—and within three days after such pit or hole shall be opened or made (where no materials shall be found), cause the same to be forthwith filled up, levelled, and covered with the turf or elod which was dug out of the same,—and in case such surveyor or person shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he shall forfeit the sum of 10*s.* for every such default; and in case such surveyor or person shall neglect to fence off such pit or hole, or to slope down the same, as hereinbefore directed, for the space of six days after he shall have received notice for either of those purposes from any justice of the peace, or from the owner or occupier of such several

ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before the justices at a special sessions for the highways, such surveyor or person shall forfeit and pay any sum not exceeding 10*l.* for such neglect. *Id.* s. 55. See *Morgan v. Leach et al.*, 12 Law J. 4, *m.* Also, if any surveyor or district surveyor shall lay or cause to be laid any heap of stone or any other matter or thing whatsoever upon any highway, and allow the same to remain there at night to the danger or personal damage of any person passing thereon, all due and reasonable precaution not having been taken by the said surveyor to guard against the same, he shall forfeit for every such offence any sum not exceeding 5*l.* *Id.* s. 56. See *ante*, p. 229.

*Penalty for taking away materials.*] If any person shall, without the consent of the surveyor, take away materials which shall have been purchased, gotten, dug, or gathered for the repair or use of any highway,—or any materials out of any quarry which shall have been made, dug, or opened for the purpose of getting materials for any highway, before the surveyor and his workmen shall have discontinued working therein for the space of six weeks (except the owner of any private grounds and persons authorized by such owner to get materials in such quarry for his own private use, and not for sale): every person so offending shall, for every such offence, forfeit and pay, on conviction thereof, any sum not exceeding 10*l.* *Id.* s. 47.

*Repairs, how compelled by the petty sessions.*] If any highway is out of repair, or is not well and sufficiently repaired and amended, and information thereof, on the oath of one credible witness, is given to any justice of the peace, such justice shall issue a summons, requiring the *surveyor of the parish, or other person, or body politic or corporate*, chargeable with such repairs, to appear before the justices at some special sessions for the highways, to be held within the division in which the said highway may be situate; and the said justices shall either appoint some competent person to view the same, and report thereon to the justices in special sessions on a certain day and place to be then fixed, at which the said surveyor of the highways or other party as aforesaid shall be directed to attend, or the said justices shall fix a day whereon they or any two of them shall attend to view the said highway; and if to the justices, at such petty sessions, it shall appear, either on the report of the said person so appointed by them to view, or on the view of such justices, that the said highway is not in a state of thorough and effectual repair, they the said justices at



such last-mentioned special sessions, shall convict the said surveyor or other party liable to the repair of the said highway in any penalty not exceeding 5*l.*, and shall make an order on the said surveyor or other person or bodies politic or corporate, liable to repair such highway, by which order they shall limit and appoint a time for the repairing of the same, and in default of such repairs being effectually made within the time so limited, the said surveyor, or such other person or body politic or corporate as aforesaid, shall forfeit and pay to some person, to be named and appointed in a second order, a sum of money to be therein stated, and which shall be equal in amount to the sum which the said justices shall on the evidence produced before them, judge requisite for repairing such highway, which money shall be recoverable in the same manner as any forfeiture is recoverable under this Act, and such money when recovered shall be applied to the repair of such highway; and in case more parties than one are bound to repair any such highway, the said justices shall direct in their said order what proportion shall be paid by each of the said parties: but if the said highway so out of repair is a part of the *turnpike road*, the said justices shall summon the *treasurer or surveyor or other officer of such turnpike road*, and the order herein directed to be made shall be made on such treasurer or surveyor or other officer as aforesaid, and the money therein stated shall be recoverable as aforesaid: provided nevertheless, that the said justices shall not have power to make such order as aforesaid in any case where the duty or obligation of repairing the said highway comes in question. *Id.* s. 94. In any conviction or order under this section, it must appear that the highway in question is within the division for which the special sessions are holden; for otherwise it would not appear that the justices had jurisdiction. See *R. v. Martin et al.*, 13 Law J. 46, *m. post*, p. 236. And if it appear that the highway is a turnpike there can be no conviction of the surveyor. *R. v. Trafford*, 5 E. & B. 967. *Re Gorton*, 25 L. J. 239, Q. B.

And if any surveyor or other person shall be summoned before any justice, to answer any information or complaint exhibited or made against him touching or concerning any offence by him committed against the provisions of this Act, or for any supposed neglect of duty, and such surveyor or other person be convicted thereof, such justice may order the payment by such surveyor or other person of all costs or proceedings against him; but in case such information or complaint shall afterwards be withdrawn, or quashed, or dismissed, or if the defendant shall be acquitted, such justices may order that the person exhibiting such information or complaint shall

pay to the defendant all such costs as to such justice shall seem reasonable. *Id.* s. 97.

In default of immediate payment of the sum so awarded, it shall be lawful for such justices to cause the same to be levied by distress and sale of the goods and chattels of the person ordered to pay the same, together with the costs of such distress and sale; and if sufficient goods and chattels cannot be found, it shall be lawful for such justices to commit such person to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding one calendar month, unless the sum so awarded, together with all costs and expenses, shall be sooner paid and satisfied. *Id.* s. 97.

And no fine, issue, penalty, or forfeiture, for not repairing the highway, or not appearing to any indictment for not repairing the same, shall hereafter be returned into the court of Exchequer or other court, but shall be levied by and paid into the hands of such person residing in or near the parish where the road shall lie, as the justices or court imposing such fines, &c., shall order and direct, to be applied towards the repair and amendment of such highway; and the person so ordered to receive such fine shall receive, apply, and account for the same, according to the direction of such justices or court, or in default thereof shall forfeit double the sum received; and if any fine, &c., to be imposed for not repairing the highway, or not appearing as aforesaid, shall hereafter be levied on any inhabitant of such parish, township, or place, then such inhabitant shall and may make his complaint to the justices at a special sessions for the highways; and the said justices are hereby empowered and authorized, by warrant under their hands, to make an order on the surveyor of the parish for payment of the same out of the money receivable by him for the highway rate, and that he shall within two months next after service of the said order on him, pay unto such inhabitant the money therein mentioned. *Id.* s. 96.

But if on the hearing of any such summons respecting the repair of any highway, the duty or obligation of such repairs is denied by the surveyor on behalf of the inhabitants of the parish, or by any other party charged therewith, such justices shall direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpoenaed, at the next assizes to be holden in and for the said county, or at the next general quarter sessions of the peace for the county, riding, division, or place wherein such highway shall be, against the inhabitants of the parish or the party to be named in such order, for suffering and permitting the said highway to be out of repair; and the costs of such prosecution shall be directed by the judge of assize, before whom the said indictment is tried,

or by the justices at such quarter sessions, to be paid out of the rate made and levied in pursuance of this Act, in the parish in which such highway shall be situate: provided nevertheless, that it shall be lawful for the party against whom such indictment shall be so preferred at the quarter sessions as aforesaid, to remove such indictment by *certiorari* or otherwise, into His Majesty's court of King's Bench. *Id.* s. 95. The order under this section must show that the highway was situate within the division for which the special sessions was holden; otherwise the court of quarter sessions will not be warranted in allowing the costs of the prosecution. *R. v. Martin et al.*, 13 Law J. 45, m.; 2 Q. B. 1037, n. If the liability is denied, the justices have no discretion to refuse to order an indictment. *R. v. Arnould*, 8 E. & B. 550. The justices will not order an indictment if there has been already an indictment and a verdict for the defendants. *Ex parte Bartlett*, 30 L. J. 168, Q. B. The judge may give costs to the prosecutor though the defendants plead guilty. *R. v. Haslemere*, 32 L. J. Q. B. 29. This section applies to the South Wales highways. *R. v. James*, 32 L. J. 211, M. C.

*Repairs, how compelled by indictment.*] Allowing a public highway to be out of repair, is a nuisance and a misdemeanor in the inhabitants of the parish or township, or in the corporation or individual, liable by law to repair it. And for this of course an indictment will lie at common law. And the clause in the Highway Act already mentioned (sect. 94, *ante*, p. 235), which enables justices at petty sessions to entertain a complaint upon this subject, where the liability to repair is not disputed, does not prevent parties proceeding by indictment in the first instance.

*Width of highways.*] The surveyor shall make, support, and maintain every public cartway, leading to any market town, twenty feet wide at the least, and every public horseway eight feet wide at the least, and shall support and maintain every public footway by the side of any carriage-way or cartway three feet at the least, if the ground between the fences including the same will admit thereof: but nothing herein contained shall require any surveyor to make or form any public footway, without the consent of the inhabitants in vestry assembled. *Id.* s. 80.

*Width of gates.*] If any gate across any public cartway shall be less than ten feet wide, or any gate across any public horseway shall be less than five feet wide, clear between the posts thereof, then and in every such case, upon notice in writing from the surveyor to the person to whom such gate

shall belong, left at the dwelling-house of such person or his steward or agent, requiring him to enlarge the same,—if such person shall neglect for the space of twenty-one days after such notice shall have been left as aforesaid to remove or enlarge such gate, he shall forfeit a sum not exceeding 10*s.* for every day he shall so neglect to remove or enlarge such gate as aforesaid. *Id.* s. 81.

*Way, whilst highway repairing.*] The surveyor may make a road through the grounds adjoining to any ruinous or narrow part of any highway (not being the site or ground whereon any house stands, nor being a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to any house or inclosed ground set apart for building ground, or as a nursery for trees), to be made use of as a public highway, whilst the old road is repairing or widening, making such recompense to the proprietor or occupier of such grounds for the damages they may thereby sustain as the justices at a special sessions for the highways assembled may think reasonable, such sum so awarded as a recompense to be recoverable in the same manner as any fines and forfeitures are recoverable under this Act. *Id.* s. 25.

*Parish, how compelled to contribute to repair of turnpike roads.*] By stat. 4 & 5 Vict. c. 59, [continued by 23 & 24 Vict. c. 67,] the justices at any special sessions for the highways, upon information exhibited before them by the clerk or treasurer of any turnpike trust, that the funds of the said trust are insufficient for the repairs of the turnpike roads within any parish [township, &c.], (notice in writing of such intended information having been previously given on the part of such clerk or treasurer to the parish surveyor twenty-one days at least before such special sessions,) may examine the state of the revenues and debts of such turnpike trusts, and inquire into the state and condition of the repairs of the roads within the same, and also ascertain the length of the roads, including turnpike roads, within such parish, and how much of such road is turnpike road; and if after such examination it shall appear to the said justices necessary or expedient for the purposes of any turnpike road so to do, then they may adjudge and order what portion, if any, of the rate or assessment levied or to be levied by virtue of stat. 5 & 6 Will. 4, c. 50, shall be paid by the said parish surveyor, and at what time or times to the said commissioners or trustees, or to their treasurer or other officers appointed by them on that behalf,—such money to be wholly laid out in the actual repairs of such part of such turnpike road as lies within the parish from which it was received. Sect. 1. Where the funds, which

would otherwise be sufficient for the repair of the turnpike road, were exhausted by paying the interest on a debt secured upon the tolls, the court held that in such a case the justices had the power to make an order under this Act. *R. v. White*, 4 Q. B. 101; 12 Law J. 31, m. In an order under this section, it must appear on the face of it that it was made at a special sessions of the highways for the division within which the turnpike road is situate. *R. v. Morice et al.*, 14 Law J. 75, m. The section applies to turnpike roads made before as well as after the Act. *Sunk Island Trustees v. Patrington*, 31 L. J. 18, M. C.; 26 J. P. 102. In the case of turnpike roads in a highway district the highway board stands in the same position as the surveyor. 26 & 27 Vict. c. 94, s. 1.

And if any such parish surveyor shall refuse or neglect to pay over such portion of the said rate or assessment, at the time or times and in the manner mentioned in the order of the said justices, the same shall and may be levied upon the goods and chattels of such surveyor, in such manner as penalties and forfeitures are by stat. 5 & 6 Will. 4, c. 50, authorized to be levied. *Id.* s. 2.

And if any person shall think himself aggrieved by any order, judgment or determination made, or by any matter or thing done, by any justices of the peace at any such special sessions in pursuance of this Act, such person shall be at liberty to make his complaint thereof by appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, riding, division, or place wherein the cause of such complaint shall arise, such applicant first giving to such justices ten days' notice in writing of the grounds of such appeal, within six days after such order, judgment, or determination shall be made or given as aforesaid, [see *R. v. JJ. of Derbyshire*, 14 Law J. 84,] who are hereby required, within forty-eight hours after the receipt of such notice, to return all proceedings whatever had before them respectively, touching the matter of such appeal, to the said justices at the general quarter sessions aforesaid. *Id.* s. 3. Upon an appeal under this Act, a justice who is a trustee of the turnpike cannot vote. *R. v. JJ. of Hertfordshire*, 14 Law J. 176, Q. B.

And by stat. 3 Geo. 4, c. 126, s. 110, when the inhabitants of any parish, township, or place shall be indicted for not repairing any highway, being a turnpike road, and the court before whom such indictment shall be preferred shall impose a fine for the repair of such road, such fine shall be apportioned, together with the costs and charges attending the same, between the inhabitants of such parish, township, or place, and the trustees or commissioners of such turnpike road, in such manner as to the said court, upon consideration of the circumstances of the case, shall seem just.

*Duty of Surveyor to widen Highways.*

Where it shall appear, upon view of two justices of the peace, that any highway is not of sufficient breadth, and might be widened and enlarged, such justices shall and they are hereby empowered, within their respective divisions, to order such highway respectively to be widened and enlarged in such manner as they shall think fit, so that the said highway, when widened and enlarged, shall not exceed thirty feet in breadth; but neither of the said powers shall extend to pull down any house or building, or to take away the ground of any garden, lawn, yard, court, park, paddock, planted walk, plantation, or avenue to any house, or any inclosed ground set apart for building ground or as a nursery for trees. The surveyor is to make an agreement to recompense owners whose lands are injured, or if they cannot agree, the justices may empanel a jury to assess such damages; and the said ground after such agreement or verdict as aforesaid shall be esteemed and taken to be a public highway to all intents and purposes whatsoever; saving nevertheless to the owner of such ground all mines, minerals, and fossils lying under the same which can or may be got without breaking the surface of the said highway, and also all timber and wood growing upon such ground, to be felled and taken by such owner within one month after such order shall have been made, or in default thereof to be felled by the said surveyor within the respective months aforesaid, and laid upon the land adjoining, for the benefit of the said owner; and where there shall not appear sufficient money in the hands of the surveyor for the purpose aforesaid, then the said two justices in cases of agreement, or the said court of quarter sessions after such verdict as aforesaid, shall direct the surveyor to make, collect, and levy an equal rate; provided that no such rate to be made in any one year shall exceed one-third part of the rate by this Act authorized to be levied, in addition to the rate for the repair of the highways. 5 & 6 Will. 4, c. 50, ss. 82, 83.

And the powers and provisions in this Act contained with respect to the widening and enlarging, diverting, turning, or stopping up any highway, shall be applicable to all highways which any person, body politic or corporate, is or are bound to repair by reason of any grant, tenure, limitation, or appointment of any charitable gift or otherwise howsoever. *Id.* s. 93. The surveyor has no right, of his own authority, to enlarge or improve a highway, if it interfere with the adjoining owner's land; as, for example, to put additional and larger stepping stones in a brook. *Sutcliffe v. Sowerby*, 23 J. P. 758.

*Duty of Surveyor to stop up or divert Highways.*

<i>Previous application to justices, 240.</i>	<i>Appeal, 242.</i>
<i>Justices' view and certificate, 240.</i>	<i>Order of sessions, 244.</i>
<i>Order where there is more than one highway, 242.</i>	<i>Liability to repair the new way, 244.</i>

*Previous application to justices.*] When the inhabitants in vestry assembled shall deem it expedient that any highway should be stopped up, diverted, or turned, either entirely or reserving a bridleway or footway along the whole or any part or parts thereof, the chairman of such meeting shall, by an order in writing, direct the surveyor to apply to two justices to view the same, and shall authorize him to pay all the expenses attending such view, and the stopping up, diverting, or turning such highway, either entirely or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act; but if any other party shall be desirous of stopping up, diverting, or turning any highway as aforesaid, he shall, by a notice, in writing, require the surveyor to give notice to the churchwardens to assemble the inhabitants in vestry, and to submit to them the wish of such person; and if such inhabitants shall agree to the proposal, the said surveyor shall apply to the justices as last aforesaid for the purposes aforesaid; and in such case the expenses aforesaid shall be paid to such surveyor by the said party, or be recoverable in the same manner as any forfeiture is recoverable under this Act; and the said surveyor is hereby required to make such application as aforesaid. *Id.* s. 84. As to the highways which may be thus stopped up or diverted, see sect. 93, *ante*, p. 239.

*Justices' view and certificate.*] And when it shall appear upon such view of such two justices of the peace [and which view must be had by them jointly, *R. v. J.J. of Cambridgeshire*, 4 Ad. & El. 111], that any public highway may be diverted and turned, either entirely or subject as aforesaid, so as to make the same nearer or more commodious to the public, and the owner of the lands, through which such new highway shall be so proposed to be made, shall consent thereto by writing under his hand, or if it shall appear upon such view that any public highway is unnecessary, the said justices shall direct the surveyor to affix a notice in the form or to the effect of schedule (No. 19) to this Act annexed, in legible characters, at the place and by the side of each end of the said highway

from whence the same is proposed to be turned, diverted, or stopped up, either entirely or subject as aforesaid, and also to insert the same notice in one newspaper published or generally circulated in the county where such highway shall lie, for four successive weeks next after the said justices have viewed the same, and to affix the like notice on the door of the church of every parish in which such highway, or any part thereof, shall lie, on four successive Sundays next after the making such view; and the said several notices having been so published, and proof thereof having been given to the satisfaction of the said justices, and a plan having been delivered to them at the same time particularly describing the old and the proposed new highway, by metes, bounds and admeasurement thereof (which plan shall be verified by some competent surveyor), the said justices shall proceed to certify under their hands the fact of their having viewed the said highway as aforesaid, and that the proposed new highway is nearer or more commodious to the public (see *E. v. Jones*, 12 Ad. & El. 684); and if nearer, the said certificate shall state the number of yards or feet it is nearer, or if more commodious, the reasons why it is so; and if the highway is proposed to be stopped up as unnecessary, either entirely or subject as aforesaid, then the certificate shall state the reason why it is unnecessary; and the said certificate of the said justices, together with the proof and plan so laid before them as aforesaid, shall, as soon as conveniently may be after the making of the said certificate, be lodged with the clerk of the peace for the county in which the said highway is situated, and shall (at the quarter sessions which shall be holden for the limit within which such highway shall lie, next after the expiration of four weeks from the day of the said certificate of the said justices having been lodged with the clerk of the peace as aforesaid) be read by the said clerk of the peace in open court; and the said certificate, together with the proof and plan aforesaid, as well as the consent in writing of the owner of the land through which the new highway is proposed to be made, shall be enrolled by the clerk of the peace among the records of the said court of quarter sessions: provided always, that any person whatever shall be at liberty, at any time previous to the said quarter sessions, to inspect the said certificate and plan as aforesaid lodged with the said clerk of the peace, and to have a copy thereof, on payment to the clerk of the peace at the rate of sixpence per folio, and a reasonable compensation for the copy of the plan. *Id.* s. 85.

The following is the form of notice for diverting, &c.:—

*Notice is hereby given, that on the — day of — next, application will be made to Her Majesty's justices of the*



*peace assembled at quarter sessions in and for the county of —, at —, for an order for [if the order be for turning, diverting, and stopping up, &c., here state it, and describe the road ordered to be turned, diverted, and stopped up; if the order be for stopping up a useless road, here state it, and describe the road ordered to be stopped up; and that the certificate of two justices having viewed the same, &c., with the plan of the old and proposed new highway, will be lodged with the clerk of the peace for the said county, on the — day of — next.*

A. B. } Surveyor [or surveyors] of the  
[C. D., &c.,] } parish of —.

*Order where there is more than one highway.]* And where it is proposed to stop up or divert more than one highway, which highways shall be deemed to be so connected together as that they cannot be separately stopped or diverted without interfering one with the other, it shall be lawful to include such different highways in one order or certificate. *Id.* s. 86.

*Appeal.]* When any such certificate shall have been so given as aforesaid, it shall and may be lawful for any person, who may think that he would be injured or aggrieved if any such highway should be ordered to be diverted or turned or stopped up, either entirely or subject as aforesaid, and such new highway set out and appropriated in lieu thereof as aforesaid, or if any unnecessary highway should be ordered to be stopped up as aforesaid, to make his complaint thereof by appeal to the justices of the peace at the said quarter sessions, upon giving to the surveyor ten days' notice [before the first day of the sittings, and not the adjourned sitting, *R. v. J.J. of Lancashire*, 8 E. & B. 563,] in writing of such appeal, together with a statement in writing of the grounds thereof, who is hereby required within forty-eight hours after the receipt of such notice, to deliver a copy of the same to the party by whom he was required to apply to the justices to view the said highway; provided that in all cases where the said surveyor shall have been directed by the inhabitants in vestry assembled to apply to such justices as aforesaid, then the said surveyor shall not be required to deliver a copy of such notice to any party; but it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement as aforesaid. *Id.* s. 88.

And in case of such appeal, the justices of the said quarter sessions shall,—for the purpose of determining whether the

proposed new highway is nearer or more commodious to the public, or whether the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or whether the said party appealing would be injured or aggrieved,—impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions; and if, after hearing the evidence produced before them, the said jury shall return a verdict that the proposed new highway is nearer or more commodious to the public, or that the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or that the party appealing would not be injured or aggrieved, then the said court of quarter sessions shall dismiss such appeal, and make the order herein mentioned for diverting and turning and stopping up such highway either entirely or subject as aforesaid, or for diverting, turning, and stopping up of such old highway, or for stopping up such unnecessary highway either entirely or subject as aforesaid; but if the said jury shall return a verdict that the proposed new highway is not nearer or not more commodious to the public, or that the highway so intended to be stopped up, either entirely or subject as aforesaid, is not unnecessary, or that the party appealing would be injured or aggrieved, then the said court of quarter sessions shall allow such appeal, and shall not make such order as aforesaid. *Id.* s. 89. Where upon an appeal against a certificate of justices for stopping up a highway, it appeared that the justices had certified that the proposed line was nearer and more commodious than the old one, and the grounds of appeal were, that the proposed line was not nearer and more commodious,—a jury being impanelled as directed by the Act, found that the proposed new way was nearer, but not more commodious than the old one: the court held that upon this finding, the sessions could not make an order for stopping up the way. Where the justices have certified that the way was nearer and more commodious, both facts ought to be proved upon the appeal. *R. v. Shiles et al.*, 10 Law J. 157, m.; 1 Q. B. 919.

In the event of any appeal being brought against the whole or any part of any order or certificate for diverting more highways than one, the court may decide upon the propriety of confirming the whole or any part of such order or certificate, without prejudice to the remaining part thereof. *Id.* s. 87.

And the court of quarter sessions is hereby authorized and required to award to the party giving or receiving notice of appeal, such costs and expenses as shall be incurred in prosecuting or resisting such appeal, whether the same shall be tried or not. Hence an appellant who abandons the appeal is nevertheless entitled to his costs. *R. v. JJ. of West*

*Riding*, 31 Law J. 259, M. C. And such costs and expenses shall be paid by the surveyor or other party as aforesaid at whose instance the notice for diverting and turning or stopping up the highway shall have been given; and in case the said surveyor or other party as aforesaid shall not appear in support thereof, the said court of quarter sessions shall award the costs of the appellant to be paid by such surveyor or other party as aforesaid, and such costs shall be recoverable in the same manner as any penalties or forfeitures are recoverable under this Act. *Id.* s. 90. If the appellant in such an appeal be ordered to pay costs, his not paying them is not such an offence as renders the party liable to a summary conviction under the 103rd section of the Highway Act. *Selwood v. Mount et al.*, 10 Law J. 121, m.

*Order of sessions.*] But if no such appeal be made, or being made shall be dismissed as aforesaid, then the justices at the said quarter sessions shall make an order to divert and turn and stop such highway, either entirely or subject as aforesaid, or to divert, turn, and stop up such old highway, and to purchase the ground and soil for such new highway, or to stop up such unnecessary highway, either entirely or subject as aforesaid, by such ways and means, and subject to such exceptions and conditions in all respects, as in this Act is mentioned in regard to highways to be widened; and the proceedings thereupon shall be binding and conclusive on all persons whomsoever; and the new highway so to be appropriated and set out, shall be and for ever after continue a public highway to all intents and purposes whatsoever; but no old highway (except in the case of stopping up of such useless highway as herein is mentioned) shall be stopped up, until such new highway shall be completed and put into good condition and repair, and so certified by two justices of the peace upon view thereof, which certificate shall be returned to the clerk of the peace, and by him enrolled amongst the records of the court of quarter sessions next after such order as aforesaid shall have been made pursuant to the directions hereinbefore contained. 5 & 6 Will. 4, c. 50, s. 91.

*Liability to repair the new way.*] Where a highway shall have been turned or diverted under the provisions of this Act, the parish or other party which was liable to repair the old highway, shall be liable to the repair of the new highway, without any reference whatever to its parochial locality. *Id.* s. 92.

*Duty of Surveyor to erect Direction Posts, &c.*

The surveyor of every parish shall, with the consent of the inhabitants in vestry, or by the direction of the justices at a special sessions for the highways, cause direction posts to be erected, as well as stones or posts to mark the boundaries of the highway, containing the name of the parish wherein situate; and such surveyor of every parish shall, at the several approaches to such parts of any highways as are subject to deep or dangerous floods, cause to be erected graduated stones or posts, for the guiding of travellers in the best and safest track through the floods; and also to secure horse causeways and foot causeways, by posts, blocks, or stones fixed in the ground, or by banks of earth cast up, or otherwise from being passed over and spoiled by waggons, wains, carts or carriages. *Id.* s. 24. The surveyor is not bound to erect posts at the mouth of a footway to prevent carriages entering. *Ellis v. Woodbridge*, 8 C. B. N. S. 290.

*Duty of Surveyor to remove Snow or other Obstructions.*

If any impediment or obstruction shall arise in any highways from accumulation of snow, or from the falling down of the banks on the sides of such highways, or from any other cause, the surveyor is required from time to time, and within twenty-four hours after notice thereof from any justice of the peace of the county in which the parish may be situate, to cause the same to be removed. *Id.* s. 26.

*Duty of Surveyor to prosecute for Nuisances.*

<i>Trees near the highway</i> , 245.	<i>Riding on footpaths, injuring the road, making fires, &amp;c.</i> , 250.
<i>Hedges</i> , 246.	
<i>Ditches</i> , 247.	
<i>Encroachments</i> , 248.	<i>Matters laid on highways</i> , 251.
<i>Steam-engines, windmills, &amp;c.</i> , 248.	<i>Cattle straying on highways</i> , 251.
<i>Locomotives</i> , 249.	<i>Nuisances at common law</i> , 253.
<i>Gates on railways</i> , 249.	

*Trees near the highway.*] No tree, bush, or shrub shall hereafter be planted on any carriageway or cartway, or within the distance of fifteen feet from the centre thereof, but the same shall respectively be cut down, grubbed up, and carried

away by the owner or occupier of the land or soil, within twenty-one days after notice to him or his agent by the surveyor, on pain of forfeiting for every neglect the sum of 10s. *Id.* s. 64. And where in this Act any matter or thing is directed or forbidden to be done within a certain distance of the centre of the highway, that portion of ground shall be deemed and taken to be the highway, which has been maintained by the surveyor as highway, and repaired with stones or other materials used in forming highways, for six months immediately preceding; and the centre of the highway shall be the middle of such highway, where a line being drawn along the highway, or a point marked, an equal number of feet of highway, which have been so maintained and repaired as aforesaid for twelve months before, shall be found on each side of such line or mark. *Id.* s. 63. *Chapman v. Robinson*, 23 J. P. 228; E. & E. 25.

*Hedges.*] If the surveyor shall think that any carriageway or cartway is prejudiced by the shade of any hedges, or by any trees (except those trees planted for ornament, or for shelter to any hop-ground, house, building, court-yard, of the owner thereof), growing in or near such hedges or other fences, and that the sun and wind are excluded from such highway, to the damage thereof,—or if any obstruction is caused in any carriageway or cartway by any hedge or tree,—it shall be lawful for any one justice of the peace on the application of the said surveyor, to summon the owner of the land on which such hedges or trees are growing to appear before the justices at a special sessions for the highways, to show cause why the said hedges are not cut, pruned, or plashed, or such trees not pruned or lopped, in such manner that the carriageway or cartway shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from the same to the damage thereof, or why the obstruction caused therein should not be removed; and the question as to the cutting, pruning, or plashing such hedges, or the pruning and lopping such trees, or the removal of such obstruction, shall, upon proof of the service of such summons, and whether the said owner attend or not, be determined at the discretion of such last-mentioned justices; and if such justices shall order and direct that such hedges shall be cut, pruned, or plashed, or such trees pruned or lopped, in manner aforesaid, or such obstruction removed, the said owner shall comply therewith within ten days after a copy of such order shall have been left at the usual place of abode of the said owner or of his steward or agent, and in default thereof shall forfeit, on conviction, a sum not exceeding 40s.; and the said surveyor, if the order of the said justices is not complied with, shall

cut, prune, or plash such hedges, and prune and lop such trees, for the benefit and improvement of the highway, and remove such obstruction as aforesaid, to the best of his skill and judgment and according to the true intent and meaning of this Act; and the said surveyor shall be reimbursed by the owner as aforesaid what charges and expenses he shall be at, in cutting, pruning, and plashing such hedges, and pruning and lopping such trees, and the removal of such obstruction over and above the said forfeiture; and it shall and may be lawful for the justices at a special sessions for the highways, upon proof to them made upon oath, to levy as well the expenses of cutting, pruning, and plashing such hedges, or pruning and lopping such trees, or removal of such obstructions as aforesaid, as the several respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, in such manner as distresses and sales for forfeitures are authorized and directed to be levied by virtue of this Act. *Id.* s. 65. See *Brooke v. Jenny et al.*, 11 Law J. 10, m.; 13 *Id.* 376, qb.; 2 Q. B. 265. But no person shall be compelled, nor any surveyor permitted, to cut or prune any hedge at any other time than between the last day of September, and the last day of March; and no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever, except where the highways shall be ordered to be widened or enlarged as herein mentioned, or then to cut down or grub up any oak tree growing in such highway or in such hedges, except in the months of April, May, or June, or any ash, elm, or other trees in any other months than December, January, February, or March. *Id.* s. 66.

*Ditches.*] The said surveyor, district surveyor, or assistant surveyor shall have power to make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses, and also to make and lay such trunks, tunnels, plate, or bridges, as he shall deem necessary, in and through any lands adjoining or lying near to any highway, upon paying the owner or occupier of such lands (provided they are not waste or common), for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are herein (*ante*, p. 232) directed to be settled and paid. *Id.* s. 67. See *Peters et al. v. Clarkson et al.*, 13 Law J. 153, m.; 7 Man. & Gr. 548.

And if any owner, occupier, or other person shall alter, obstruct, or in any manner interfere with any such ditches, gutters, drains, or watercourses, trunks, tunnels, plate, or bridges, after they shall have been made by or taken under the charge of such surveyor, or district surveyor, and without his authority and consent, such owner, occupier, or other person shall

be liable to reimburse all charges and expenses which may be occasioned by reinstating and making good the work so altered, obstructed, or interfered with, and shall also forfeit any sum not exceeding three times the amount of such charges and expenses. *Id.* s. 68.

*Encroachments.*] If any person shall encroach, by making or causing to be made any building, hedge, ditch or other fence, or any carriageway or cartway, within the distance of fifteen feet from the centre thereof, every person so offending shall forfeit, on conviction, for every such offence, any sum not exceeding 40s.; and the surveyor who hath the care of any such carriageway or cartway, shall cause such building, hedge, ditch, or fence to be taken down or filled up at the expense of the person to whom the same shall belong; and the justices at a special sessions for the highways, upon proof to them made upon oath, shall levy as well the expenses of taking down such building, hedge, or fence, or filling up such ditch as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, in such manner as distresses and sales for forfeitures are authorized and directed to be levied by virtue of this Act. 5 & 6 Will. 4, c. 50, s. 69.

*Steam-engines, windmills, &c.*] It shall not be lawful for any person to sink any pit or shaft, or to erect or cause to be erected any steam-engine, gin, or other like machine, or any machinery attached thereto, within the distance of twenty-five yards, nor any windmill within fifty yards, from any part of any carriageway or cartway, unless such pit or shaft or steam-engine, gin, or other like engine or machinery, shall be within some house or other building, or behind some wall or fence sufficient to conceal or screen the same from the said carriageway or cartway, so that the same may not be dangerous to passengers, horses, or cattle;—nor shall it be lawful for any person to make or cause to be made any fire for calcining or burning of ironstone, limestone, bricks, or clay, or the making of cokes, within the distance of fifteen yards from any part of the said carriageway or cartway, unless the same shall be within some house or other building, or behind some wall or fence, sufficient to screen the same from the same carriageway or cartway as aforesaid;—and in case any person shall offend in any of the cases aforesaid, every such person so offending shall forfeit and pay any sum not exceeding 5*l.* for each and every day such pit, shaft, windmill, steam-engine, gin, machine, or fire shall be permitted to continue contrary to the provisions of this Act, which said penalties shall be levied, recovered, and applied in such and the same

manner as any penalty or forfeiture for any other offence on any highway may be levied, recovered, and applied: provided that nothing herein contained shall be construed to restrain any person or persons from using, repairing, rebuilding, or enlarging any windmill, steam-engine, gin, or other like machine, or any kiln, or other erection used for the purpose of calcining or burning of ironstone, limestone, bricks, or clay, or the making of coles, which may have been erected and may be in existence at the passing of this Act. *Id.* s. 70. A portable steam-engine is within this enactment. *Smith v. Stokes*, 27 J. P. 535.

*Use of locomotives.*] In the event of locomotives using a highway, if the engine is of greater width than seven feet, and of greater weight than twelve tons, the person using the locomotive must first obtain the permission of the surveyor and also of the justices acting in petty sessions for the petty sessional division. 24 & 25 Vict. c. 70, s. 3. If it appear to the home secretary that the use of any particular description of locomotive causes excessive wear and tear of the highway, or is dangerous or inconvenient to the public, he may by order prohibit its use or restrict its use. *Id.* s. 5. Nor shall a locomotive be driven over any suspension bridge or any bridge on which the surveyor has placed a notice stating that the bridge is insufficient for more than the ordinary traffic of the district, without first obtaining the consent of the surveyor. *Id.* s. 6. All locomotives on a highway must be so constructed as to consume their own smoke. *Id.* s. 8. There must be at least two persons in charge of the locomotive, and at night two efficient lights must be exhibited and affixed conspicuously. *Id.* s. 9. The locomotive shall not be driven at a greater speed than five miles an hour. *Id.* s. 11. And generally, it must be so used as not to be a public or private nuisance. *Id.* s. 13.

*Gates on railways.*] Whenever a railroad shall cross a highway for carts or carriages, or turnpike road, the proprietors of the said railroad shall make and maintain good and sufficient gates at each of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad; and any complaint for any neglect in respect of the said gates, shall be made within one calendar month after the said neglect, to any justice, who may summon the party so complained against to appear before him at the next petty sessions, who shall hear and decide upon the said complaint, and the



proprietor so offending shall forfeit any sum not exceeding 5*l.*, together with such costs, as to the said justices shall seem fit; 2 & 3 Vict. c. 45, s. 1; to be recovered and applied in like manner as penalties under stat. 5 & 6 Will. 4, c. 50. *Id.* s. 45.

*Riding on footpaths, injuring the road, making fires, &c.*  
If any person shall wilfully ride upon any footpath or causeway by the side of any road, made or set apart for the use or accommodation of foot passengers;—or shall wilfully lead or drive any horse, ass, sheep, mule, swine, or cattle or carriage of any description, or any truck, or sledge, upon any such footpath or causeway;—or shall tether any horse, ass, mule, swine, or cattle on any highway, so as to suffer or permit the tethered animal to be thereon;—or shall cause any injury or damage to be done to the said highway, or the hedges, posts, rails, walls, or fences thereof;—or shall wilfully obstruct the passage of any footway;—or wilfully destroy or injure the surface of any highway;—or shall wilfully or wantonly pull up, cut down, remove, or damage the posts, blocks, or stones fixed by the said surveyor as herein directed; or dig or cut down the banks, which are the securities and defence of the said highways;—or break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injure or deface the same;—or pull down, destroy, obliterate, or deface any milestone or post, graduated, or direction post or stone, erected upon any highway;—or shall play at football or any other game (such as hare and hounds, or a mock stag hunt, *Maynard v. Pappin*, 27 J. P.) on any part of the said highways, to the annoyance of any passenger or passengers (though a constable may be the only person annoyed; *Woolley v. Corbishley*, 23 J. P. 773);—or if any hawker, higgler, gipsy, or other person travelling, shall pitch any tent, booth, stall, or stand, or encamp, upon any part of any highway;—or if any person shall make or assist in making any fire, or shall wantonly fire off any gun or pistol, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework, whatsoever within fifty feet of the centre of such carriageway or cartway;—or bait, or run for the purpose of baiting, any bull upon or near any highway;—or shall lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon such highway, to the injury of such highway, or to the injury, interruption, or personal danger of any person travelling thereon;—or shall suffer any filth, dirt, lime, or other offensive matter or thing whatsoever (which does not include the rain drops from houses, *Crosdell v. Ratcliff*, 26 J. P. 165) to run or flow into or upon any

highway from any house, building, erection, lands, or premises adjacent thereto ;—or shall in any way wilfully obstruct the free passage of any such highway :—every person so offending in any of the cases aforesaid, shall for each and every such offence forfeit and pay any sum not exceeding 40s., over and above the damages occasioned thereby. 5 & 6 Will. 4, c. 50, s. 72.

*Matters laid on highways.]* If any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever, shall be laid upon any highway, so as to be a nuisance, and shall not, after notice given by the surveyor, assistant surveyor, or district surveyor, be forthwith removed, it shall and may be lawful for the surveyor, assistant surveyor, or district surveyor, by order in writing from any one justice, to clear the said highway, by removing the said stone, hay, straw, dung, manure, soil, ashes, rubbish, or other matter or thing as aforesaid, and to dispose of the same, and to apply the proceeds arising therefrom towards the repairs of the highway within the parish in which such highway may be situate; provided nevertheless that if any soil, ashes, or rubbish shall be laid on any highway, and such soil, ashes, or rubbish shall not be of sufficient value to defray the expense of removing them, the person who laid or deposited such soil, ashes, or rubbish, shall repay to the said surveyor, assistant surveyor, or district surveyor the money which he shall have necessarily expended for the removal thereof, which money, in case the same shall not be forthwith repaid, shall be levied as forfeitures are herein directed to be levied. *Id.* s. 73. This section merely enables the surveyor, if he have the order of a justice, to remove the nuisance; but it does not authorize the justice to convict or punish the surveyor for not removing it, in pursuance of the order. *Morgan v. Leach et al.*, 12 Law J. 4, m. The justices have power to convict even though the defendant as the adjoining owner sets up a claim of title to the alledged way, and says it is no highway. *Williams v. Adams*, 2 B. & S. 312.

*Cattle straying on highways.]* If any horse, ass, sheep, swine, or other beast or cattle of any kind, shall at any time be found wandering, straying, or lying, or being depastured, on any highway or on the sides thereof, without a keeper (and a keeper of cattle does not mean one who has manual possession by a halter or rope; *Sherborn v. Wells*, 32 L. J. 179, M. C.) (except on such parts of any road as lead or pass through or over any common or waste or uninclosed ground,)—any surveyor, or any other person authorized by him, is hereby required to seize and impound every such horse, ass, sheep,

swine, or other beast or cattle, in the common pound (if any) of the parish where the same shall be found, or in such other place as the surveyor shall have provided or shall provide for that purpose, and the same there to detain, until the owner thereof shall, for every and each horse, ass, sheep, swine, or other beast or cattle so impounded, pay any sum not exceeding 1*s.*, together with reasonable charges and expenses (such charges to be settled by any two justices of the peace), of impounding and keeping the same, to the surveyor of the parish in which the beast so impounded shall have been found, the said sum so paid for each beast to be applied to the repair of the said highway; and in case the said penalty, charges, and expenses shall not be paid within five days after such impounding (notice being thereof first given to the owner, if known at the time), it shall and may be lawful for any two justices of the peace to order every such horse, ass, sheep, swine, or other beast or cattle to be sold, except where it shall be made to appear to such justices that the same escaped from any inclosure by any gate or fence being wilfully or negligently left open or destroyed by any person not being owner of such inclosure, nor employed by such owner, or that it arose from accident, and was not wilful, in which case justices may remit the said penalty; and the money arising from such sale, after deducting the said penalty, and charges and expenses of impounding, keeping, and selling every such horse, ass, sheep, swine, or other beast or cattle, shall be paid to the person whose property the same so sold shall appear to have been; and in case the owner thereof shall not be known, and no application shall be made for the money arising from such sale within one calendar month after such sale shall have taken place, the said money shall be applied, after deducting the said charges and expenses, in the same manner as the said penalty of 1*s.* is herein directed to be applied; but no owner of any horse, ass, sheep, swine, or other beast or cattle impounded as aforesaid, shall in any case pay more than the sum of 20*s.*, over and above the charges and expenses of impounding and keeping the same, for any number of horses, asses, sheep, swine, or other beast or cattle impounded at one time: also nothing in this Act shall be deemed, taken, or construed to extend to take away any right of pasturage, which may exist on the sides of any highway. *Id.* s. 74.

And in case any person shall release or attempt to release any horse, ass, sheep, swine, or other beast or cattle, which shall be seized for the purpose of being impounded under the authority of this Act, from the pound or place where the same shall be so impounded, or in the way to or from any such pound or place, or shall pull down, damage, or destroy the same pound or place, or any part thereof, or any lock or bolt

belonging thereto or with which the same shall be fastened, or shall rescue or release, or attempt to rescue or release, any distress or levy which shall be made under the authority of this Act, until or before such horse, ass, sheep, swine, or other beast or cattle seized or so impounded, or such distress, or levy so made, shall be discharged by due course of law: every person so offending shall, upon conviction thereof before any two of Her Majesty's justices of the peace, forfeit and pay any sum not exceeding 20*l.*, and in default thereof be committed by such justices, by warrant under their hands and seals, to the house of correction of the county wherein the said offence shall have been committed, there to be kept to hard labour for any time not exceeding three calendar months. *Id.* s. 75.

As to impounding cattle, sheep, and swine grazing upon roads or ways set out under the General Inclosure Act, see stat. 8 & 9 Vict. c. 118, s. 100.

*Nuisances at common law.*] Any obstruction of a common highway, as by erecting a gate across it, locking a gate already erected, digging a ditch, or making a hedge across it, laying logs of timber on it, or injuring it in any way, or doing any other act by which it is rendered less commodious to the Queen's subjects,—is a public nuisance at common law, (1 *Hawk.* c. 76, ss. 144, 146,) and is a misdemeanor, indictable and punishable with fine or imprisonment, or both.

*Duty of Surveyor to account, deliver up Books, &c.*

*To account, 253.*

*To deliver up books, &c., on  
quitting office, 254.*

*To account.*] Within fourteen days after the election or appointment of surveyor, the accounts made or signed by the surveyor, district surveyor, or assistant surveyor for the year preceding, of all monies received and disbursed by virtue of this Act, ending on the day of the election or appointment of surveyor, shall be made up, balanced and laid before the parishioners in vestry; and within one calendar month after such election or appointment, the said accounts shall be laid before the justices of the peace at a special sessions for the highways holden at the place nearest to the parish or district for which such surveyor shall have been appointed, and such justices are hereby authorized and required to examine him as to the truth of the said accounts or of any charge contained therein: provided always, that if any person, chargeable to the rate authorized to be made by this Act, has any

complaint against such accounts or the application of the monies received by the said surveyor, it shall be lawful for any such inhabitant to make his complaint thereof to such justices at the time of the verification of such accounts as aforesaid, and the said justices are hereby required to hear such complaint, and, if they shall think fit, to examine such surveyor upon oath, and to make such order thereon as to them shall seem meet. *Id.* s. 44. The surveyor is entitled to be paid by the parish for expenses which have been either ordered by the vestry or allowed by the justices. *Townsend v. Reid*, 10 C. B. N. S. 317. The surveyor must not include in his accounts an item for an old debt of a former year. *Taylor v. Stansfield*, 26 J. P. 199. An assistant surveyor is not liable to account under this section. *Adams v. Lakeman*, E. B. & E. 615.

At the special sessions held next after the 25th day of March, in every year, the surveyor of each of the parishes within their respective divisions shall verify his accounts, and shall make a return in writing to such special sessions of the state of the roads, common highways, bridges, causeways, hedges, ditches, and watercourses appertaining thereto, and of all nuisances and encroachments, if any, made upon the several highways within the parish for which he was surveyor, as well as the extent of the different highways which the said parish is liable to repair, what part thereof has been repaired and with what materials, at what expense, and what was the amount levied during the time he was surveyor of the said parish. *Id.* s. 45.

The surveyor at the time of passing his accounts as herein mentioned, shall deliver to the justices a statement in writing of the name and residence of the person appointed to succeed him as surveyor. *Id.* s. 19.

It may be necessary to state, that no appeal lies against the allowance of surveyors' accounts, either by the surveyor or the parishioners. *R. v. JJ. of Leicestershire*, 8 E. & B. 557; *R. v. JJ. W. R. Yorkshire*, 10 Law J. 71, m.; and costs may be given against an appellant who appeals. *R. v. Padwick*, 8 E. & B. 704. And the court refused a mandamus to the magistrates at a special sessions for the highways, commanding them to review their allowance of the surveyor's accounts, although the justices were anxious that it should be reheard, and had come to their decision under a mistaken impression that an appeal lay to the quarter sessions against it. *R. v. JJ. of the W. R. of Yorkshire*, 10 Law J. 137, m.; 1 Q. B. 624. These enactments do not apply to highway districts formed under 25 & 26 Vict. c. 61, s. 42.

*To deliver up books, &c., on quitting office.]* The surveyor,

district surveyor, or assistant surveyor shall, within fourteen days after leaving his office, deliver such books and accounts verified as herein directed, together with all such sums of money as shall be due from him, and likewise all tools, materials, implements, and other things as aforesaid, to his successors in office, or retain the same in his hands and account for them in his next account if he shall be continued surveyor or district surveyor of such parish in the succeeding year; and in case such surveyor or district surveyor shall neglect to deliver within such time as aforesaid the said books, papers, writings, and accounts, and such tools, materials, implements, and other things, in manner aforesaid, he shall for every such offence forfeit any sum not exceeding 5*l.*; and in case he shall make default in the paying or accounting for the money so due from him within the time and according to the directions aforesaid, he shall forfeit double the money so due. *Id.* s. 42.

*3. Penalties for Neglect of Duty.*

If any surveyor or district surveyor, or assistant surveyor, shall neglect his duty in anything required of him by this Act, for which no particular penalty is imposed, he shall forfeit for every such offence any sum not exceeding 5*l.* *Id.* s. 20. See *Morgan v. Leach et al.*, 12 Law J. 4, *m.*

*Penalties, how recovered, &c.*

<i>Securing unknown offenders,</i> 255.	<i>Witnesses,</i> 256.
<i>Symmons, information, &amp;c.,</i> 256.	<i>Penalties, &amp;c., how levied,</i> 256.

*Securing unknown offenders.*] Whereas offences may be committed against this Act by persons whose names are unknown to the surveyor, assistant surveyor, or district surveyor: be it therefore enacted, that it shall be lawful for the surveyor, assistant surveyor, or district surveyor, or any person acting under his authority, and such other person witnessing the commission of the offence, without any other authority than this Act, to seize and detain such unknown person who shall commit any such offence, and take him forthwith before any justice of the peace, who shall proceed and act with respect to such offence according to the provisions of this Act. *Id.* s. 79.

*Summonses, information, &c.*] Where any penalty or forfeiture is recoverable before justices of the peace under this Act, any justice to whom complaint shall be made of any such offence, may summon the party complained against before any two justices, and on such summons the said two justices may hear and determine the matter, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same, although no information in writing shall have been exhibited or taken by or before such justice. *Id.* s. 101.

*Witnesses.*] If any person, after being paid or tendered a reasonable sum of money for his costs, charges and expenses, shall be summoned as a witness to give evidence before any justices of the peace touching any matter or fact contained in any information for an offence against this Act, either on the part of the prosecutor or person accused, and shall refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his refusal or neglect, —or appearing shall (after having been paid or tendered a reasonable sum for his costs, charges, and expenses) refuse to be examined upon oath and give evidence, such person shall forfeit for every such offence, any sum not exceeding 5*l.* *Id.* s. 102.

*Penalties, &c., how levied.*] All penalties and forfeitures and all balances due from a surveyor, and all other costs and charges, shall, upon proof and conviction of the offences respectively before any two or more justices, or upon order made under the authority of the Act, be levied, together with the costs, by distress and sale of the goods and chattels of the person ordered to pay the same; and if such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, the justices may order the offender to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless he shall give sufficient security, by way of recognizance or otherwise, to the satisfaction of such justices for his or their appearance before them on such day as shall be appointed for the return of such warrant of distress, such day not being later than seven days from the time of taking such security, or in case it shall appear to the satisfaction of such justices, either by the confession of the offender or otherwise, that he hath not goods or chattels within the jurisdiction of such justices sufficient whereon to levy all such penalties, &c., and such justices may at their discretion, without issuing any warrant of distress, commit the offender for such period of time, and in such and like manner, as if a warrant of distress had been issued, and *nulla bona* returned

thereon; but if a warrant of distress shall be issued, and upon the return whereof it shall appear that no sufficient distress can be had thereon to levy the said penalty, &c., and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such justices, upon the confession of the offender or otherwise, that he hath not sufficient goods and chattels whereupon such penalty, &c., could be levied if a warrant of distress were issued, such justices shall not be required to issue such warrant, but in such case such justices shall, by warrant under their hands, cause such offender or offenders to be committed to the common gaol or house of correction of the county, riding, or place where the offender shall be or reside, there to be kept to hard labour, for any term not exceeding three calendar months, unless such penalties, &c., shall be sooner paid and satisfied; the penalties and forfeitures shall be paid, the one half to the informer, and the other half to the surveyor of the parish where such offence shall happen, to be applied towards the repair of the highways thereof, unless otherwise directed by this Act; but in case the surveyor shall be the informer, then the whole shall be applied towards the repair of such highway. *Id.* s. 103.

Where, upon an appeal against a certificate of justices for stopping up a highway, the sessions award costs, the not paying those costs is not an offence within the meaning of this section, so as to authorize two justices to convict the party. *Selwood v. Mount et al.*, 10 Law J. 121, m.



## LOCAL AUTHORITIES.

*For the Removal of Nuisances.*

1. *The Local Authority*, 258.
2. *Nuisances*, 262.
3. *Proceedings to abate them*, 267.

The stat. 18 & 19 Vict. c. 121, (the short title of which is "The Nuisances Removal Act for England, 1855,") repealed the Nuisances Removal and Diseases Prevention Acts of 1848 and 1849, and substituted for them other provisions. And it was amended by the Act 23 & 24 Vict. c. 77. The Act does not affect the jurisdiction of the commissioners of sewers, or the navigation of rivers or canals, or the rights of mill-owners in respect of the supply or fall of water, &c., nor does it extend to mines, &c. The Diseases Prevention Act, 18 & 19 Vict. c. 116, was also amended by the Act 23 & 24 Vict. c. 77.

## 1. THE LOCAL AUTHORITY.

*Local authority*, 258.  
*Diseases prevention*, 259.

*Inspector of nuisances*, 260.  
*Expenses, how defrayed*, 260.

*Local authority.*] The following bodies shall respectively be the local authority to execute the said Nuisances Removal Act in the said districts hereunder stated in England:

In any place within which the Public Health Act is or shall be in force, the local board of health:

In any other place wherein a council exists or shall exist, the mayor, aldermen, and burgesses by the council, except in the city of London and the liberties thereof, where the local authority shall be the commissioners of sewers for the time being, and except in the city of Oxford and borough of Cambridge, where the local authority shall be the commissioners acting in execution of the

local improvement Act in force respectively in the said city or borough :

In any place in which there is no local board of health or council, and where there are or shall be trustees or commissioners under an improvement Act, such trustees or commissioners :

In any place within which there is no such local board of health, council, body of trustees, or commissioners, if there be a board of guardians of the poor for such place, or for any parish or union within which such place is situate, such board of guardians, and, if there be no such board of guardians, the overseers of the poor for such place, or for the parish of which such place forms part.

Provided, that in any place where a highway board or "The Nuisances Removal Committee," chosen by the vestry in pursuance of the said Act, is subsisting, and at the time of the passing of this Act employs or joins with other local authorities in employing a sanitary inspector or inspectors, such highway board or nuisances removal committee may continue to act, and a like committee may be annually chosen by the vestry for such place in the same manner as if this Act had not been passed ; but in case in any year the nuisances removal committee be not chosen for such place in manner provided by the said Act, or if the highway board or committee now subsisting or hereafter chosen fail for two months in any year to appoint or employ a sanitary inspector or inspectors, the authority of such highway board or committee shall cease, and no like committee shall be chosen for such place, and the same body or persons shall thenceforth be the local authority for the place as if no such highway board or committee had been appointed therein. 23 & 24 Vict. c. 77, ss. 2, 3.

The local authority may appoint any committee of their own body to receive notices, take proceedings, and in all or certain specified respects execute this Act, whereof two shall be a quorum ; and such local authority or their committee may, in each particular case, by order in writing under the hand of the chairman of such body or committee, empower any officer or person to make complaints and take proceedings on their behalf. 18 & 19 Vict. c. 121, s. 5.

*Diseases prevention.*] The board of guardians for every union, or parish not within an union, in England shall be the local authority for executing the said Diseases Prevention Act in every place within their respective unions and parishes, and in every parish and place in England not within a union, and for which there is no board of guardians, the overseers of the

poor shall be the local authority to execute the same Act; and the expenses incurred in the execution of such Act by the board of guardians for a union shall be defrayed out of the common fund thereof, and the expenses of the board of guardians or overseers of the poor of any single parish or place shall be defrayed out of the rates for the relief of the poor of such parish or place; provided that every such board of guardians shall, for the execution of the said Act for the prevention of diseases, have the like powers of appointing committees, with the like authority, and where any such committee is appointed the expenses thereof and of the board shall be paid in the same manner, as hereinbefore provided where such a board is the local authority for the execution of the said Nuisances Removal Act; provided also, that any expenses already incurred by any local authority in the execution of the said Act shall be defrayed as if this Act had not been passed; provided, moreover, that in respect of any place where, under this Act, the local authority for executing the Nuisances Removal Act is any other body than the board of guardians or the overseers of the poor, the privy council, if it see fit, may, in the manner provided for the exercise of its powers under the Public Health Act, 1858, authorize such other body to be, instead of the board of guardians or the overseers of the poor, the local authority for executing the Diseases Prevention Act; provided also, that as regards the metropolis the vestries and district boards under the Act of the session holden in the 18 & 19 Vict. c. 120, within their respective parishes and districts, shall continue to be the local authorities for the execution of the said "Diseases Prevention Act, 1855," and their charges and expenses shall be defrayed as if this Act had not been passed. 23 & 24 Vict. c. 77, s. 11.

*Inspector of nuisances.*] Local authorities may, for the purposes of the Nuisances Removal Act, severally appoint or employ inspectors of nuisances, and make such payments as they see fit for the remuneration and expenses of such inspectors. *Id.* s. 9.

*Expenses, how defrayed.*] All charges and expenses incurred by the local authority in executing the said Nuisances Removal Act, and not recovered as therein provided, shall be defrayed as follows; to wit,

Out of general district rates where the local authority is a local board of health:

Out of the borough fund or borough rate where the local authority is the mayor, aldermen, and burgesses by the council:

Provided always, that in the city of Oxford and borough

of Cambridge such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable :

Out of the rates levied for purposes of improvement under any improvement Act, where the local authority is a body of trustees or commissioners acting in execution of the powers of such an Act :

Where a board of guardians for a union is such local authority for the whole of such union, such charges and expenses shall be defrayed by means of an addition to be made to the rate for the relief of the poor of the parish or parishes for which the expense has been incurred, and be raised and paid in like manner as money expended for the relief of the poor :

Where the board of guardians for a union is such local authority for two or more places maintaining their own poor, but not for all such places in such union, such charges and expenses shall be paid out of the poor rates of the places aforesaid for which the board is the local authority :

Where the board of guardians for a union is under this Act the local authority for a single place maintaining its own poor, and where the board of guardians for any such single place, or the overseers of any such place, or "The Nuisances Removal Committee" continued or chosen as hereinbefore provided in any such place, are under this Act the local authority for such place, such charges and expenses shall be defrayed out of the rates for the relief of the poor thereof :

Where the board of guardians for a union is under this Act the local authority for part only of any place maintaining its own poor, together with the whole of any other such place or part of any other such place, such board shall apportion such charges and expenses between or among any or every such part and any or every such place ; and so much of such charges and expenses as may be apportioned to any or every such place for the whole of which such board is the local authority shall be defrayed out of the rates or funds applicable to the relief of the poor thereof :

So much of any such charges and expenses as may be apportioned to part of a place maintaining its own poor, and any such charges and expenses incurred by any board of guardians or overseers, where such board or overseers are the local authority for part of any such place only, shall be defrayed by means of an addition to be made to the rate for the relief of the poor thereof, and be raised and paid in like manner as money expended for the relief of the poor. *Id.* s. 4.

Provided, that the board of guardians for a union may appoint a committee or committees of their own body, under sect. 5 of the said Nuisances Removal Act, to act in and for one or more of the parishes or places for which the board is the local authority; and every committee so appointed shall have the full power of executing the said Act in all respects, within the specified place or places for which it is appointed, unless its power be expressly limited by the terms of its appointment; and the board of guardians shall cause the charges and expenses of every such committee to be paid out of the poor rates of the place or places for which such committee is appointed; and where a committee is so appointed for any such place or places the charges and expenses of the board as local authority for or in respect of the place or places for which a committee is not appointed shall be paid or contributed by such last-mentioned place or places in like manner as the expenses of a committee: provided that where any one such committee is appointed for all the places for which the board is the local authority, its charges and expenses shall be contributed and paid in like manner as the charges and expenses of the board would have been contributed and paid if such committee had not been appointed. *Id.* s. 5.

## 2. NUISANCES.

*What*, 262.

*Open ditches, &c.*, 263.

*Water corrupted by gas washings*, 264.

*Unwholesome provisions*, 264.

*Noxious trades, &c.*, 265.

*Overcrowded houses*, 266.

*What.*] The word "nuisances" under this Act shall include—

Any premises in such a state as to be a nuisance or injurious to health:

Any pool, ditch, gutter, watercourse, privy, urinal, cess-pool, drain, or ashpit so foul as to be a nuisance or injurious to health:

Any animal so kept as to be a nuisance or injurious to health:

Any accumulation or deposit which is a nuisance or injurious to health:

Provided always, that no such accumulation or deposit as shall be necessary for the effectual carrying on of any business or manufacture shall be punishable as a nuisance under this section, when it is proved to the satisfaction of the justices that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture,

and that the best available means have been taken for protecting the public from injury to health thereby. 18 & 19 Vict. c. 121, s. 8.

*Open ditches, &c.*] Surveyors and district surveyors may make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall thereby sustain, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are directed to be settled and paid by the law in force for the time being with regard to highways. *Id.* s. 21. And whenever any ditch, gutter, drain, or watercourse used or partly used for the conveyance of any water, filth, sewage, or other matter from any house, buildings or premises, is a nuisance within the meaning of this Act, and cannot, in the opinion of the local authority, be rendered innocuous, without the laying down of a sewer or of some other structure along the same or part thereof or instead thereof, such local authority shall and they are hereby required to lay down such sewer or other structure, and to keep the same in good and serviceable repair, and they are hereby declared to have the same powers as to entering lands for the purposes thereof as under the Highway Act, 5 & 6 Will. 4, c. 76, and such local authority are hereby authorized and empowered to assess every house, building, or premises then or at any time thereafter using for the purposes aforesaid the said ditch, gutter, drain, watercourse, sewer, or other structure, to such payment either immediate or annual, or distributed over a term of years, as they shall think just and reasonable, and, after fourteen days' notice at the least left on the premises so assessed, to levy and collect the sum and sums so assessed in the same manner, and with the same remedies in case of default in payment thereof, as highway rates are by the law in force for the time being leviable and collectable, and with the same right and power of appeal against the amount of such assessment reserved to the person or persons so assessed as by the law for the time being in force shall be given against any rate made for the repair of the highways; and the provisions contained in this section shall be deemed to be part of the law relating to highways in England: provided always, that where such ditch, gutter, drain, or watercourse shall, as to parts thereof, be within the jurisdiction of different local authorities, this enactment shall apply to each local authority only as to so much of the works hereby required, and the expenses thereof, as is included within the

respective jurisdiction of that authority : provided also, that such assessment shall in no case exceed 1s. in the pound on the assessment to the highway rate, if any. *Id.* s. 22.

*Water corrupted by gas washings.*] Any person or company engaged in the manufacture of gas who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying any gas whereby the water in any such stream, reservoir, or aqueduct, pond or place for water, shall be fouled, shall forfeit for every such offence the sum of 200*l.* *Id.* s. 23. If any pump or fountain is wilfully or maliciously damaged, or the water fouled, the party convicted of such offence before two justices shall forfeit 5*l.*, and 20*s.* per day. 23 & 24 Vict. c. 77, s. 8.

Such penalty may be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or if there be no such person, or in default of proceedings, by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority ; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased. 18 & 19 Vict. c. 121, s. 24.

In addition to the said penalty of 200*l.* (and whether such penalty shall have been recovered or not), the person or company so offending shall forfeit the sum of 20*l.* (to be recovered in the like manner) per day, after notice, while the fouling continues. *Id.* s. 25.

*Diseased and unwholesome meat.*] The medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for such purpose or purposes, or was not intended for the food of man, resting with the party charged ; and in case any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour appear to him to be diseased, or unsound, or unwholesome, or unfit for the food of man, it shall be lawful for such medical officer of health or inspector of nuisances to seize, take, and carry away the

same, or direct the same to be seized, taken, and carried away by any officer, servant, or assistant, in order to have the same dealt with by a justice; and if it shall appear to the justice that any such animal, or any of the said articles, is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall order the same to be destroyed, or so disposed of as to prevent such animal or articles from being exposed for sale or used for such food; and the person to whom such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour belongs or did belong at the time of sale or of exposure for sale, or in whose possession or on whose premises the same is found, shall, upon conviction, be liable to a penalty not exceeding 20*l.* for every animal, carcase, or fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour so found, or, at the discretion of the justice, without the infliction of a fine, to imprisonment in the common gaol or house of correction for a term of not more than three calendar months. And in case any person shall in any manner prevent such medical officer of health or inspector of nuisances from entering any slaughter-house, shop, building, market, or other place where such animal, carcase, meat, poultry, or fish is kept for the purpose of sale or of preparation for sale, or shall in any manner obstruct or impede him, or his servant or assistant, when duly engaged in carrying the provisions of this Act into execution, such person shall be liable to a penalty not exceeding 5*l.* 26 & 27 Vict. c. 117, ss. 2, 3.

*Noxious trades, &c.*] If any candle-house, melting-house, melting-place, or soaphouse, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia, be at any time certified to the local authority by any medical officer, or any two legally qualified medical practitioners, to be a nuisance or injurious to the health of the inhabitants of the neighbourhood, the local authority shall direct complaint to be made before any justice, who may summon before any two justices in petty sessions assembled at their usual place of meeting the person by or in whose behalf the work so complained of is carried on, and such justices shall inquire into such complaint, and if it shall appear to such justices that the trade or business carried on by the person complained against is a nuisance, or causes any effluvia injurious to the health of the inhabitants of the neighbourhood, and that such person shall not have used the best practicable means for abating such nuisance or preventing or counteract-

■



ing such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier,) shall, upon a summary conviction for such offence, forfeit and pay a sum of not more than 5*l.* nor less than 40*s.*, and upon a second conviction for such offence, the sum of 10*l.*, and for each subsequent conviction a sum double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of 200*l.*: provided always, that the justices may suspend their final determination in any such case upon condition that the person so complained against shall undertake to adopt, within a reasonable time, such means as the said justices shall judge to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or shall give notice of appeal in the manner provided by this Act, and shall enter into recognizances to try such appeal, and shall appeal accordingly: provided always, that the provisions hereinbefore contained shall not extend or be applicable to any place without the limits of any city, town, or populous district. 18 & 19 Vict. c. 121, s. 27.

Provided that if upon his appearance before such justices, the party complained against object to have the matter determined by such justices, and enter into recognizances, with sufficient sureties, to be approved by the justices, to abide the event of any proceedings at law or in equity that may be had against him on account of the subject matter of complaint, the local authority shall thereupon abandon all proceedings before the justices, and shall forthwith take proceedings at law or in equity in Her Majesty's superior courts for preventing or abating the nuisance complained of. *Id.* s. 28.

In metropolitan parishes it is also a penal offence to allow furnaces to cause annoyance by smoke. 16 & 17 Vict. c. 128, s. 1; 19 & 20 Vict. c. 107, s. 1.

*Overcrowded houses.*] Whenever the medical officer of health, if there be one, or if none, whenever two qualified medical practitioners, shall certify to the local authority that any house is so overcrowded as to be dangerous or prejudicial to the health of the inhabitants, and the inhabitants shall consist of more than one family, the local authority shall cause proceedings to be taken before the justices to abate such overcrowding, and the justices shall thereupon make such order as they may think fit, and the person permitting such overcrowding shall forfeit a sum not exceeding 40*s.* 18 & 19 Vict. c. 121, s. 29.

### 3. PROCEEDINGS TO ABATE THEM.

*Notice of nuisance*, 267.

*Entry to view*, 268.

*Complaint, summons, and order*, 271.

*How, if party complained of cannot be found*, 276.

*The proceedings*, 276.

*Penalties*, 277.

*Costs and expenses, &c.*, 280.

*Appeal*, 281.

*Actions, &c.*, 282.

*Notice of nuisance.*] Notice of nuisance may be given to the local authority by any person aggrieved thereby, or by any of the following persons: the sanitary inspector or any paid officer under the said local authority; two or more inhabitant householders of the parish or place to which the notice relates; the relieving officer of the union or parish; any constable or any officer of the constabulary or police force of the district or place; and in case the premises be a common lodging house, any person appointed for the inspection of common lodging houses; and the local authority may take cognizance of any such nuisance after entry made as hereinafter provided, or in conformity with any improvement Act under which the inspector has been appointed. *Id.* s. 10. See also *post*, 271.

#### FORM (B.)

##### *Notice of Nuisance.*

*To the local authority* [describing it].

I [or we], the person aggrieved by the nuisance herein-after described [or the undersigned and described inhabitant householders, sanitary inspector, or other officer (describing him)] do hereby give you notice, that there exists in or upon the [dwelling house, yard, &c., as the case may be], situate at — [giving such description as may be sufficient to identify the premises], in the parish of —, in your district, under the Nuisances Removal Act, 1855, the following nuisance, *videlicet*, [describing the nuisance, as the case may be; for instance, a dwelling house or building a nuisance or injurious to health for want of a privy or drain or sufficient means of ventilation, or so dilapidated or so filthy as to be a nuisance or injurious to health, or, for further instance, a ditch or drain so foul as to be a nuisance or injurious to health, or an accumulation of —, a nuisance or injurious to health, &c., or swine so kept as to be a nuisance or injurious

*to health*]; and that such a nuisance is caused by [naming the person by whose act or default the nuisance is caused, or by some person unknown].

*Dated this — day of —, in the year of our Lord one thousand eight hundred and —.*

[Signed by complainant under sect. 10.]

*Entry to view.*] The local authority shall have power of entry for the following purposes of this Act, and under the following conditions:—

1. To ground proceedings.

For this purpose, when they or any of their officers have reasonable grounds for believing that a nuisance exists on any private premises, demand may be made by them or their officer, on any person having custody of the premises, of admission to inspect the same, at any hour between nine in the morning and six in the evening; and if admission be not granted, any justice having jurisdiction in the place may, on oath made before him of belief in the existence of the nuisance, and after reasonable notice of the intended application to such justice being given in writing to the party on whose premises the nuisance is believed to exist, by order under his hand require the person having the custody of the premises to admit the local authority or their officer; and if no person having custody of the premises can be discovered, any such justice may and shall, on oath made before him of belief in the existence of such nuisance, and of the fact that no person having custody of the premises can be discovered, by order under his hand authorize the local authority or their officers to enter the premises between the hours aforesaid.

2. To examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by justices to be done under this Act.

For these purposes, whenever, under the provisions of this Act, a nuisance has been ascertained to exist, or when an order of abatement or prohibition under this Act has been made, or when it becomes necessary to ascertain the course of a drain, the local authority may enter on the premises, by themselves or their officers, between the hours aforesaid, until the nuisance shall have been abated, or the course of the drain shall have been ascertained, or the works ordered to be done shall have been completed, as the case may be.

3. To remove or abate a nuisance in case of non-compliance with or infringement of the order of justices, or to inspect or examine any carcass, meat, poultry,

game, flesh, fish, fruit, vegetables, corn, bread, or flour, under the powers and for the purposes of this Act.

For this purpose the local authority or their officer may from time to time enter the premises where the nuisance exists, or the carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread or flour is found, at all reasonable hours, or at all hours during which business is carried on on such premises, without notice. *Id.* s. 11.

FORM (C.)

*Notice to Owner or Occupier of Entry for Examination.*

*To the owner [or occupier, as the case may be,] of [describe the premises situate at] [insert a description sufficient to identify the premises.]* . .

*Take notice, that under the Nuisances Removal Act for England, 1855, the [local authority, naming it,] in whose district under the said Act the above premises are situate, have received a notice from [name complainant], stating that in or upon the said premises [insert the cause of nuisance as set forth in the notice].*

*And further take notice, that after the expiration of twenty-four hours from the service of this notice, the [local authority] will cause the said premises to be entered and examined under the provisions of the said Act, and if the cause of nuisance aforesaid be found still existing, or, though removed or discontinued, be likely to be repeated, a summons will be issued requiring your attendance to answer a complaint which will be made to the justices for enforcing the removal of the same, and prohibiting a repetition thereof, and for recovering the costs and penalties that may be incurred thereby.*

*Dated this — day of —, in the year of our Lord one thousand eight hundred and —.*

*A. B.*

*The officer appointed by the [local authority] to take proceedings under the Nuisances Removal Act for England, 1855.*

## FORM (D.)

*Summons.*

To the owner or occupier of [describe premises] situate at [insert such a description as may be sufficient to identify the premises], or to A. B. of —.

County of —, [or  
borough of —, &c.,  
or district of —,  
or as the case may  
be,] to wit. } You are required to appear before  
two of Her Majesty's justices of  
the peace [or one of the magis-  
trates of the police courts of the  
metropolis, or the stipendiary  
magistrate] of the county [or other jurisdiction] of —, at  
the petty sessions [or court] holden at —, on the —  
day of — next, at the hour of — in the — noon, to  
answer the complaint this day made to me by — [or by  
— on behalf of —] naming the local authority, as the case  
may be, that in or upon the premises above mentioned [or  
in or upon certain premises situate at No. — in the —  
— street in the parish of —, or such other description  
or reference as may be sufficient to identify the premises],  
in their district, under the Nuisances Removal Act for  
England, 1855, the following nuisance exists [describing it,  
as the case may be], and that the said nuisance is caused  
by the act or default of the occupier [or owner] of the said  
premises, or by you A.B. [or in case the nuisance be discon-  
tinued, but likely to be repeated, say, there existed recently,  
to wit on or about the — day of —, on the premises,  
the following nuisance [describe the nuisance], and that the  
said nuisance was caused [&c.], and although the same has  
since the said last-mentioned day been removed or discon-  
tinued, there is reasonable ground to consider that the same  
or the like nuisance is likely to recur on the said premises.]

Given under the hand of me, J. P., esquire, one of Her  
Majesty's justices of the peace acting in and for  
the [jurisdiction] stated in the margin, or one of  
the magistrates of the police courts of the metro-  
polis, or stipendiary magistrate of —, —  
day of — in the year of our Lord one thousand  
eight hundred and —.

## FORM (A.)

*Order of Justices for Admission of Officer of Local Authority to inspect private Premises.*

*Whereas* [describe the local authority have by their officer [naming him] made application to me, A. B., one of Her Majesty's justices of the peace having jurisdiction in and for [describe the place], and the said officer has made oath to me of his belief that a nuisance, within the meaning of the Nuisances Removal Act for England, 1855, viz. [describe nuisance], exists on private premises at [describe situation of premises so as to identify them], within my jurisdiction, and demand of admission to such premises for the inspection thereof has been duly made under the said Act and refused.

Now, therefore, I the said A. B. do hereby require you to admit the said [name the local authority], or [the officer of the said (local authority)], for the purpose of inspecting the said premises.

*Dated this* — day of —, 18 —.

A. B.

*Complaint, summons, and order.*] In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance in their opinion did exist at the time when the notice was given, and although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace; and such justice shall thereupon issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises or continues, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint; and if it be proved to their satisfaction that the nuisance exists, or did exist at the time when the notice was given, or, if removed or discontinued since the notice was given, that it is likely to recur or to be repeated, the justices shall make an order in writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance and prohibition of the nuisance as hereinafter mentioned, and shall also make an order for the payment of all costs incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance. *Id.* s. 12.

Or on complaint before a justice of the peace by any inhabitant of any parish or place of the existence of any nuisance

on any private premises in the same parish or place, such justice shall issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before two justices in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint, and act in relation thereto as in cases where complaint is made by a local authority under sect. 12 of the said Nuisances Removal Act, and as if the person making the complaint were such local authority: provided always, that it shall be lawful for the said justices, if they see fit, to adjourn the hearing or further hearing of such summons for an examination of the premises where the nuisance is alleged to exist, and to require the admission or authorize the entry into such premises of any constable or other person or persons, and thereupon the person or persons authorized by the order of the justices may enter and act as the local authority might under a like order made by any justice under sect. 11 of the said Act: provided also, that the costs in the case of every such application shall be in the discretion of the justices, and payment thereof may be ordered and enforced as in other cases of summary adjudication by justices. Any order made by justices under this enactment shall be attended with the like penalties and consequences for disobedience thereof and subject to the like appeal as any order made under sect. 12 of the said Nuisances Removal Act, and the justices making such order may thereby authorize any constable or other person or persons to do all acts for removing or abating the nuisance condemned or prohibited, and for executing such order, in like manner as a local authority obtaining the like order might do under the said Act, and to charge the costs to the person on whom the order is made, as is provided in the case where a like order is obtained and executed by such local authority. 23 & 24 Vict. c. 77, s. 13.

By their order the justices may require the person on whom it is made to provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable, or to pave, cleanse, whitewash, disinfect, or purify the premises which are a nuisance or injurious to health, or such part thereof as the justices may direct in their order, or to drain, empty, cleanse, fill up, amend, or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit which is a nuisance or injurious to health, or to provide a substitute for that complained of, or to carry away the accumulation or deposit which is a nuisance or injurious to health, or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health, or

if it be proved to the justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance), or to do such other works or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified; and if the justices are of opinion that such or the like nuisance is likely to recur, the justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence, as the case may, in the judgment of such justices, require; and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose they may determine their previous order by another declaring such house habitable, from the date of which other order such house may be let or inhabited. 18 & 19 Vict. c. 121, s. 13.

And any person not obeying the said order for abatement shall, if he fail to satisfy the justices that he has used all due diligence to carry out such order, be liable for every such offence to a penalty of not more than 10s. per day during his default; and any person knowingly and wilfully acting contrary to the said order of prohibition shall be liable for every such offence to a penalty not exceeding 20s. per day during such contrary action; and the local authority may, under the powers of entry given by this Act, enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited, and do whatever may be necessary in execution of such order, and charge the cost to the person on whom the order is made as hereinafter provided. *Id.* s. 14. Where the order of justices to abate the nuisance has been disobeyed, it is necessary again to summon the party before a conviction can be made, for there may have been a good reason, such as poverty, for the disobedience. *R. v. Jenkins*, 32 L. J. 50, Q. B.



## FORM (E.)

*Order of Justices for Removal of Nuisances by Owner, &c.*

To the owner [or occupier] of [describe the premises], situate [give such description as may be sufficient to identify the premises], or to A. B. of —, or to [giving name of the local authority], or to their servants or agents, and to all whom it may concern.

County of — [or] Whereas on the — day of — borough, &c. of —, { complaint was made before —, or district of —, or { esquire, one of Her Majesty's justices of the peace acting in and for the county [or other jurisdiction] stated in the margin, [or before the undersigned, one of the magistrates of the police courts of the metropolis, or as the case may be], by [or by — on behalf of] [the local authority, naming it, as the case may be], that in or upon certain premises situate at —, in the district under the Nuisances Removal Act for England, 1855, of the complainants above-named, the following nuisance then existed [describing it]; and that the said nuisance was caused by the act or default of the owner [or occupier] of the said premises [or was caused by A. B.]. (If the nuisance have been removed, say the following nuisance existed on or about [the day the nuisance was ascertained to exist], and that the said nuisance was caused, &c., and although the same is now removed, the same or the like nuisance is likely to recur on the same premises).

And whereas —, the owner [or occupier] within the meaning of the said Nuisances Removal Act, 1855, [or the said A. B.] hath this day appeared before us justices, being two of Her Majesty's justices in and for —, sitting in petty sessions, at their usual place of meeting [or before me, the said magistrate of the police courts of the metropolis, or as the case may be], to answer the matter of the said complaint [or in case the party charged do not appear, say, And whereas it hath been this day proved to our [or my] satisfaction that a true copy of a summons requiring the owner [or occupier] of the said premises [or the said A. B.] to appear this day before us [or me] —, hath been duly served according to the said Act :

Now upon proof here had before us [or me] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [or occupier] of the said premises [or by the said A. B.] we

[or I], in pursuance of the said Act, do order the said owner [or occupier, or A. B.] within [specify the time] from the service of this order or a true copy thereof according to the said Act [here specify the works to be done, as for instance, to cleanse, whitewash, purify, and disinfect the said dwelling-house; or, for further instance, to construct a privy or drain, &c.; or, for further instance, to cleanse or to cover or to fill up the said cesspool, &c.; so that the same shall no longer be a nuisance or injurious to health as aforesaid.

## FORM (G.)

## Order to permit Execution of Works by Owners.

County of — [or } Whereas complaint hath been made  
borough of —, or } to me, E. F., esquire, one of Her  
metropolitan police } Majesty's justices of the peace in  
district, or as the case } and for the county [or borough,  
may be,] to wit. } &c.] of — [or one of the magistrates of the police courts of the metropolis, or as the case may be, or one of Her Majesty's justices of the peace, as the case may be, of the county of —], by A. B. owner within the meaning of the "Nuisances Removal Act for England, 1855," of certain premises, to wit, a dwelling house [or building, or as the case may be,] situate at [insert such a description of the premises as may be sufficient to identify them], in the parish of —, in the said county [or borough, &c.], that C. D., the occupier of the said premises, doth prevent the said A. B. from obeying and carrying into effect the provisions of the said Act, in this, to wit, that he the said C. D. [here describe the act of prevention generally according to the circumstances; for instance thus, doth refuse to quit the said house, the same having by the order of the justices being declared unfit for human habitation, or doth prevent the said A. B. from cleansing or whitewashing, or purifying the said dwelling house, or erecting a privy or drain, or breaking an aperture for ventilation, or cleansing a drain, ditch, gutter, watercourse, privy, urinal, cesspool, or ashpit which is a nuisance or injurious to health]. And whereas the said C. D. has been summoned to answer the said complaint, and has not shown sufficient cause against the same, and it appears to me that [describe the act or works to be done] is necessary for the purpose of enabling the said A. B. to obey and carry into effect the provisions of the said Act, I do hereby order that the said C. D. do permit the said A. B. [describe the act, or works to be done] in the manner required by the said Act.

Given under my hand and seal, this — day of —, in the year of our Lord one thousand eight hundred and —.

E. F. (L.S.)

*How, if party complained of cannot be found.*] Whenever it appears to the satisfaction of the justices that the person by whose act or default the nuisance arises, or the owner or occupier of the premises, is not known or cannot be found, then such order may be addressed to and executed by such local authority, and the cost defrayed out of the rates or funds applicable to the execution of this Act. *Id.* s. 17.

*The proceedings.*] The local authority may, within the area of their jurisdiction, direct any proceedings to be taken at law or in equity in cases coming within the purview of this Act, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any persons offending against the provisions of this Act, or in relation to appeals under this Act, and may order the expenses of all such proceedings to be paid out of the rates or funds administered by them under this Act. *Id.* s. 30. In case of any demand or complaint under this Act to which two or more persons being owners or occupiers of premises, or partly the one or partly the other, may be answerable jointly or in common or severally, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them; but nothing herein contained shall prevent the parties so proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law. *Id.* s. 34. And whenever, in any proceeding under this Act, whether written or otherwise, it shall become necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description. *Id.* s. 35. But where proceedings under this Act are to be taken against several persons in respect of one nuisance caused by the joint act or default of such persons, it shall be lawful for the local authority to include such persons in one complaint, and for the justices to include such persons in one summons, and any order made in such a case may be made upon all or any number of the persons included in the summons, and the costs may be distributed as to the justices may appear fair and reasonable. *Id.* s. 33.

Notices, summonses, and orders under this Act may be served by delivering the same to or at the residence of the persons to whom they are respectively addressed, and where addressed to the owner or occupier of premises they may also be served by delivering the same or a true copy thereof to some person upon the premises, or if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises, or if the person shall reside at a distance of more than five miles from the office of

the inspector then by a registered letter through the post. *Id.* s. 31. And copies of any orders or resolutions of the local authority or their committee, purporting to be signed by the chairman of such body or committee, shall, unless the contrary be shown, be received as evidence thereof, without proof of their meeting, or of the official character or signature of the person signing the same. *Id.* s. 32.

And no order, nor any other proceeding, matter, or thing done or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form, nor shall any order, nor any other proceeding, matter or thing done or transacted in relation to the execution of this Act, be removed or removable by *certiorari*, or by any other writ or process whatsoever, into any of the superior courts; and proceedings under this Act against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included. *Id.* s. 39.

*Penalties.]* Whoever refuses to obey an order of justices under this Act for admission on premises of the local authority or their officers, or wilfully obstructs any person acting under the authority or employed in the execution of this Act, shall be liable for every such offence to a penalty not exceeding 5*l.* *Id.* s. 36.

If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall by order in writing require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the service of such order the occupier against whom it is made do not comply therewith, he shall be liable to a penalty not exceeding 5*l.* for every day afterwards during the continuance of such non-compliance. *Id.* s. 37.

Penalties imposed by this Act for offences committed and sums of money ordered to be paid under this Act may be recovered by persons thereto competent in England according to the provisions of the Act of the eleventh and twelfth years of the present reign, chapter forty-three; and all penalties recovered by the local authority under this Act shall be paid to them, to be by them applied in aid of their expenses under this Act. *Id.* s. 38.

## FORM (H.)

*Summons for Nonpayment of Costs, Expenses, or Penalties.*  
Sect. 20.

To —, [describe the person from whom the costs, expenses, and penalties are due].

County of —, or } You are required to appear before two  
borough of —, } of Her Majesty's justices of the peace,  
or district of —, } [or one of the magistrates of the police  
to wit. } courts of the metropolis, or the stipen-  
diary magistrates] of the county [or other jurisdiction] of  
—, at the petty sessions [or court] holden at —, on the  
— day of — next, at the hour of — in the — noon,  
to answer the complaint this day made to me by —, [or by  
—, on behalf of] [naming the local authority], that the  
sum of — pounds, being costs and expenses incurred by you  
under and in relation to a certain complaint touching [de-  
scribe the nuisance], and an order of [describe the person  
making the order], duly made in pursuance of the *Nuisances  
Removal Act for England, 1855*, [if penalties are due, add,  
and also the sum of —, being the amount of penalties pay-  
able by you for disobedience of the said order,] remains un-  
paid and due from you.

Given under the hand of me, J. P., esquire, one of Her Ma-  
jesty's justices of the peace acting in and for the [juri-  
isdiction stated in the margin], [or one of the magistrates  
of the police courts of the metropolis, or stipendary magis-  
trate of —,], the — day of —, in the year of our  
Lord one thousand eight hundred and —.

## FORM (I.)

*Order for Payment of Costs, Expenses, and Penalties.*  
Sect. 20.

To —, [name the person on whom the order is made.]

County, &c. } Whereas complaint has been made before us  
to wit. { [or me] for that [recite cause of complaint].  
And whereas the said [naming the person against whom  
the complaint is made] has this day appeared before us the  
said justices [or before me the said magistrate of the police  
courts of the metropolis, or as the case may be,] to answer

*the matter of the said complaint: [Or, in case the party charged do not appear, say],*

*And whereas it has been this day satisfactorily proved to us [or me] that a true copy of the summons requiring the said [naming person charged] to appear before us [or me] this day hath been duly served according to the said Act: Now, having heard the matter of the said complaint, we [or I] do adjudge the said [naming the person charged] to pay forthwith [or by instalments of —, payable respectively on or before the —] to the said [naming the person or local authority to whom the costs adjudged are payable], the sum of —, for costs in this behalf, and to [naming the person or authority to whom the expenses are payable] the sum of —, for expenses in this behalf, and, [if penalties are due, add, and the sum of —, for penalties incurred in relation to the premises,] together with the sum of —, being the charges attending the application for this order and proceedings thereon: and if the said several sums, amounting in the whole to —, [or if any one of the said instalments,] be not paid within fourteen days after the same is due as aforesaid, we [or I] hereby order that the same be levied by distress and sale of the goods and chattels of the said —, and in default of sufficient distress in that behalf adjudge the said — to be imprisoned in the common gaol [or house of correction, as the case may be], at —, in the said county, [or as the case may be,] for the space of such time, not exceeding three calendar months, as the justices may think fit, unless the said several sums [or sum], and all costs and charges of the said distress [and of the commitment and carrying of the said — to the said house of correction or common gaol, or as the case may be], shall be sooner paid.*

*Given under our [or my] hands, this — day of —, in the year of our Lord one thousand eight hundred and —, at —, in the [county, or as the case may be,] aforesaid.*

FORM (K.)

*Warrant of Distress. Sect. 20.*

*To the constable of —, and to all other peace officers in the said county [or as the case may be].*

*Whereas on — last past complaint was made before the undersigned, two of Her Majesty's justices of the peace in and for the said county of [or as the case may be] [or a magistrate*

*of the police courts of the metropolis, or stipendiary magistrate, as the case may be,] for that [&c., as in the order]; and thereupon having considered the matter of the said complaint, we [or I] adjudged the said — [set out from Form I. the adjudication of payment, and the order for distress and for imprisonment in default of distress]: and whereas the time in and by the said order appointed for the payment of the said several sums of — and — hath elapsed, but the said — hath not paid the same or any part thereof within fourteen days after the date fixed by the order for such payment, but therein hath made default: These are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of — days after the making of such distress the last-mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale over to the clerk of the justices of the peace for the division of — in the said [county, or as the case may be], that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said —; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.*

*Given under our [or my] hands and seal, this — day of —, in the year of our Lord one thousand eight hundred and —, at —, in the [county] aforesaid.*

(L.S.)

A. B.  
C. D.

*Costs and expenses, &c.] All reasonable costs and expenses from time to time incurred in making a complaint or giving notice, or in obtaining an order of justices under this Act, or in carrying the same into effect under this Act, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order be made on the local authority, or if no order be made, but the nuisance be proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises; and such costs and expenses and penalties, together with the charges of suing for the same, may be recovered in any county or superior court, or, if the local autho-*

city think fit, before any two justices of the peace; and the said justices shall have power to divide such costs, expenses and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable; and if it appear to them that a complaint made under this Act is frivolous or unfounded, they may order the payment by the local authority or person making the complaint of the costs incurred by the person against whom the complaint is made, or any part thereof. *Id.* s. 19.

Where any costs, expenses, or penalties are due under or in consequence of any order of justices made in pursuance of this Act as aforesaid, any justice of the peace, upon the application of the local authority, shall issue a summons requiring the person from whom they are due to appear before two justices at a time and place to be named therein; and upon proof to the satisfaction of the justices present that any such costs, expenses, or penalties are so due, such justices, unless they think fit to excuse the party summoned upon the ground of poverty or other special circumstances, shall, by order in writing under their hands and seals, order him to pay the amount to the local authority at once, or by such instalments as the justices think fit, together with the charges attending such application and the proceedings thereon; and if the amount of such order, or any instalment thereof, be not paid within fourteen days after the same is due, the same may, by warrant of the said or other justices, be levied by distress and sale. *Id.* s. 20.

*Appeal.*] When it shall appear to the justices that the execution of structural works is required for the abatement of a nuisance, they may direct such works to be carried out under the direction or with the consent or approval of any public board, trustees, or commissioners having jurisdiction in the place in respect of such works; and if within seven days from the date of the order the person on whom it is made shall have given notice to the local authority of his intention to appeal against it as provided in this Act, and shall have entered into recognizances to try such appeal as provided by this Act, and shall appeal accordingly, no liability to penalty shall arise, nor shall any work be done nor proceedings taken under such order until after the determination of such appeal, unless such appeal cease to be prosecuted. *Id.* s. 16. Also where justices by their order prohibit the recurrence of a nuisance the party may appeal. *Id.* s. 15.

Appeals under this Act shall be to the court of quarter sessions held next after the making of the order appealed against; but the appellant shall not be heard in support of the appeal, unless within fourteen days after the making of the



order appealed against, he give to the local authority notice in writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal, and shall within two days of giving such notice enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said court, and to abide the order of and pay such costs as shall be awarded by the justices at such court or any adjournment thereof; and the said court, upon hearing and finally determining the matter of the appeal, may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: provided always, that if there be no time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for, the next sessions at which the appeal can be heard; provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid; provided also, that in any case of appeal the court of quarter sessions may, if they think fit, state the facts specially for the determination of Her Majesty's court of Queen's Bench, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said court of Queen's Bench. *Id.* s. 40.

*Actions, &c.*] The local authority, and any officer or person acting under the authority and in execution or intended execution of this Act, shall be entitled to such protection and privilege in actions and suits, and such exemptions from personal liability, as are granted to local boards of health and their officers by the law in force for the time being. *Id.* s. 42.

## OVERSEERS OF THE POOR.

1. *Their Appointment*, 283.
2. *Their Duties*, 291.
3. *Their Books and Accounts*, 324.
4. *Frauds, &c., by them*, 328.
5. *Actions by and against them*, 331.
6. *Assistant Overseers*, 335.

### 1. THEIR APPOINTMENT.

<i>Who may be appointed</i> , 283.	<i>When</i> , 288.
<i>For parishes</i> , 285.	<i>How</i> , 288.
<i>For townships, hamlets, &amp;c.</i> , 285.	<i>Appointment, how enforced</i> , 290.
<i>For extra-parochial places</i> , 287.	<i>Appeal against the appoint- ment</i> , 290.

By stat. 43 Eliz. c. 2, s. 1, the churchwardens of every parish,—and four, three, or two substantial householders there, as shall be thought meet (having respect to the proportion and greatness of the parish), to be nominated yearly [on the 25th March or within fourteen days next after, 54 Geo. 3, c. 91.] under the hands and seals of two or more justices of the peace in the same county, whereof one to be of the *quorum*, dwelling in or near the same parish or division where the same parish doth lie,—shall be called overseers of the poor of the same parish. In cities and corporate towns the justices of the city or borough make the appointment. 12 & 13 Vict. c. 8, s. 1; 15 & 16 Vict. c. 38.

*Who may be appointed.*] The churchwardens are overseers of the poor *ex officio*. But it is as to the appointment of the “four, or three, or two substantial householders,” above mentioned, who are to be overseers conjointly with them that we shall treat of in this place. In the first place not more than four nor less than two shall be appointed: if more than four be appointed, the appointment will be bad; *R. v. Loxdale*, 1 Burr. 445; *R. v. Harman*, 1 Bott. 12; or if less than two be appointed, the appointment will be bad; *R. v. Clifton*, 2 East, 161; unless perhaps there is only one inhabitant in the parish. And they must be householders (*supra*): but a person occupying a house in a parish as a place of business merely, attending there daily, and his clerk living there, but

he himself residing with his family elsewhere, has been holden to be a householder within the meaning of the statute. *R. v. Poynder*, 1 B. & C. 178. And the statute mentions substantial householders: but where a township or village contained but three houses, and the occupiers of all three were appointed overseers, the appointment was holden good, although two of them were but labourers and poor. *R. v. Stubbs*, 2 T. R. 395. There is no objection also to a woman being appointed to the office. *Id.*

But peers and members of parliament,—justices of the peace (*R. v. Gayer*, 1 Burr. 245; 1 Ld. Ken. 492),—aldermen of London (*R. v. Abdy*, Cro. Car. 585),—clergymen (*Anon.*, 1 Bott, 9),—dissenting ministers (1 W. & M. c. 18, s. 1; 52 Geo. 3, c. 155, s. 9),—practising barristers and attorneys (*R. v. Prowse*, Cro. Car. 389),—members of the college of physicians (32 H. 8, c. 40),—members of the college of surgeons (18 Geo. 2, c. 15, s. 10),—apothecaries (6 & 7 Will. 3, c. 4, ss. 2, 3),—officers of the courts of law (*Ex p. Jefferies*, 6 Bing. 195),—officers of the army and navy, even on half-pay (*R. v. Gayer*, 1 Burr. 245; 1 Ld. Ken. 492),—officers of the customs and excise (*R. v. Warner*, 8 T. R. 375),—are exempt from serving the office. And persons concerned in contracts to supply goods to the workhouse, or for the use of the poor, are disqualified to be overseers. 12 & 13 Vict. c. 103, s. 6. So also are the chief and every other registrar, the accountant, the master, the official assignees, the messengers and the ushers of the Court of Bankruptcy; 12 & 13 Vict. c. 106, s. 47; nor shall a master of a workhouse or any relieving officer be appointed an overseer. 13 & 14 Vict. c. 101, s. 6.

Formerly the overseer must have been a householder within the same parish. But now, justices of the peace, in their respective special sessions for the appointment of overseers of the poor, upon the nomination and at the request of the inhabitants of any parish in vestry assembled, may appoint any person who shall be assessed to the relief of the poor thereof, and shall be a householder resident within two miles from the church or chapel of such parish, or (where there shall be no church or chapel) shall be resident within one mile from the boundary of such parish,—to be an overseer of the poor thereof, although the person so to be appointed shall not be a householder within the parish of which he shall be appointed overseer; and it shall be sufficient, in every such appointment, to describe the person appointed by his name and residence: provided that no person shall be appointed to, or be compellable to serve, the office of overseer of the poor of any parish or place in which he shall not be a householder, unless he shall have consented to such appointment. 59 Geo. 3, c. 12, s. 6. The justices are not bound to act on the nomination

of the vestry, and may entirely disregard it, having the entire discretion as to who are to be appointed. *R. v. Justices of Lancashire*, 29 L. J. 244, M. C.

Where overseers are thus appointed for a township or place where there are no churchwardens, they may alone perform all the duties assigned by law to churchwardens and overseers. 17 Geo. 2, c. 38, s. 15.

*For parishes.*] By the stat. 43 Eliz. c. 2, already mentioned, *ante*, p. 283, overseers were to be appointed by parishes only. At the time of the passing of that statute, however, there were several places in England, which were parishes by reputation, that is to say, parochial chapelries, entirely independent of the mother church as to sacraments, sepulture, &c.; and these were holden to be parishes within the meaning of the statute. *Nicholas v. Walker*, Cro. Car. 394. But they must be proved to have been so reputed at the time of the passing of the statute; *Hilton v. Pawle*, Cro. Car. 92; and they must have appeared to have had all parochial rights, and therefore to be entirely independent of the mother church. *Rudd v. Foster*, 4 Mod. 157. In these doubtful cases the court decides whether a place is a parish chiefly by the usage as to church rates and poor rates. See *ante*, p. 4.

*For townships, hamlets, &c.*] There were several parishes in England, however, to which, from their great extent or other cause, it was found extremely difficult to apply the statute 43 Eliz. c. 2; although it might be applied conveniently and profitably to the different townships or villages comprised in each of them. And therefore by stat. 13 & 14 Car. 2, c. 12, s. 21, after reciting that "the inhabitants of many counties, by reason of the largeness of the parishes within the same, have not, or cannot reap the benefit of stat. 43 Eliz. c. 2,—it was enacted, that overseers might be appointed for each township or village as if they were each a parish. 13 & 14 Car. 2, c. 12, ss. 21, 22.

And since this last statute, in a great number of parishes, divided into townships or villages, overseers have been appointed for each township and village, instead of being appointed for the parish generally, as under the statute of Elizabeth; and such townships, &c., have ever since respectively maintained their own poor. The statute has been holden to extend to all the counties of England and Wales (*Dolting v. Stokelane*, Fol. 99; Fort. 219; *Clifton v. Churcham*, 1 Nol. 10; Andr. 314), and to an extra-parochial place, (*R. v. Rufford*, 1 Str. 512,) provided it be a township or village. *R. v. Denham*, Burr. S. C. 37. *R. v. Welbeck*, 2 Str. 1143.

What is a township or village was often a question of some

difficulty to determine. A township always has a constable appointed for it; and so indicative is that circumstance of the place being a township, that Buller, J., (in *R. v. Horton*, 1 Bott, 54,) is reported to have said, that wherever there is a constable there is a township. A village is not so easily defined. According to the common acceptation of the term, it consists of a considerable number of dwelling-houses, adjoining to each other, or in the same immediate neighbourhood, and having usually a name by reputation. It must consist at least of more than two houses: *R. v. Denham*, Burr. S. C. 37, per Lee, J.: otherwise, although it may formerly have been a village, yet it has ceased to be so. S. C. per Page, J. A place, not called a village in the affidavit, which appeared to be a part of the old castle of Nottingham, was holden not to be a village within the meaning of the statute, although it consisted of upwards of twenty dwelling-houses, occupied by substantial householders. *R. v. Standard Hill*, 4 M. & S. 378. So, calling the district a "precinct" merely, would not be sufficient. *R. v. Severn and Arnold*, Say. 278. So, a place consisting of a capital messuage, and three cottages inhabited by labourers as tenants to the occupier of the messuage, was holden not to be a village within the meaning of the statute, although the sessions upon appeal had found and stated it to be so. *R. v. Showler et al.*, 3 Burr. 1391. So, the minster of Peterborough, being the area around the cathedral, was holden not to be a village within the meaning of the statute, although it consisted of sixty acres of land, having upwards of twenty-five dwelling-houses upon it. *R. v. JJ. of Peterborough*, Cald. 238. But where, in a case sent up for the opinion of the court of King's Bench, the sessions expressly found and stated the place to be a vill by reputation, the court considered themselves bound by the finding of the sessions, although it appeared that the place consisted only of three houses. *R. v. Banton Abbey*, 2 T. R. 207.

Besides this place for which it was sought to have overseers separately appointed, being a township or village, it was necessary to show that the parish in which it was situate could not collectively have the benefit of the statute of Elizabeth; which, however, did not mean that it was impossible to execute the statute within the whole parish collectively, but that it was inconvenient. *R. v. Leigh*, 3 T. R. 746. And it was not necessary to prove that it was thus inconvenient at the time of the passing of the statute of Charles; if it had become so since, and were so at the time of applying to have overseers appointed to one of the townships, it would have been sufficient. *Id. per Buller and Ashurst, JJ.* Where the sessions, on motion, ordered a parish to be thus divided, and the different townships after-

wards acted upon it for forty years,—the order of sessions then coming before the court of King's Bench, that court held it to be bad, as it stated no inability in the parish to reap the benefit of the statute of Elizabeth; and it was said that the sessions had no authority to make such an order, except on appeal. *Peart v. Westgarth*, 3 Burr. 1610, and see *R. v. Newall*, 4 T. R. 266. *R. v. Uttoxeter*, Doug. 346.

The mode of dividing a parish thus, was by applying to two justices to appoint overseers separately for one or more of the townships or villages within it. And in like manner, if it were required to have overseers appointed to an extra-parochial place, the application must have been made to two justices. If they refused an order, an application might be made to the court of Queen's Bench for a mandamus to compel them. Or if, on the other hand, the justices made the appointment, the party appointed might question its validity upon appeal to the quarter sessions; or it might be removed into the court of Queen's Bench by *certiorari*, and the validity of the order there determined upon a motion to quash it, the whole case on both sides being brought before the court upon affidavits. *R. v. Standard Hill*, 4 M. & S. 378. But now, by stat. 7 & 8 Vict. c. 101, s. 22, after the passing of this Act, (9th August, 1844,) it shall not be lawful to appoint separate overseers for any township or village or other place for which before the passing of this Act separate overseers had not been lawfully appointed.

After being separated, if from decrease of population or other change of circumstances, it become desirable that the different townships should again join in the maintenance of their poor, they might do so by agreement. *R. v. Palmer*, 8 East, 416. *Lane v. Cobham*, 7 East, 1. But the court would not compel this against the consent of any of the townships. *R. v. Leigh*, 3 T. R. 746.

Where part of a parish is in a corporate town, and separate overseers had been appointed for that part more than sixty years before the passing of this Act, the appointment shall be deemed valid. 59 Geo. 3, c. 95. See *R. v. Gordon*, 1 B. & A. 524.

Overseers of the poor, within every township or place where there are no churchwardens, have the same powers as overseers and churchwardens collectively in other places. 17 Geo. 2, c. 38, s. 15.

*For extra-parochial places.*] By stat. 20 Vict. c. 19, s. 1, after the 31st day of December, 1857, every place entered separately in the report of the registrar-general on the last census which now is or is reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, shall for

all the purposes of the assessment to the poor rate, the relief of the poor, the county, police, or borough rate, the burial of the dead, the removal of nuisances, the registration of parliamentary and municipal voters, and the registration of births and deaths, be deemed a parish for such purposes, and shall be designated by the name which is assigned to it in such report; and the justices of the peace having jurisdiction over such place or over the greater part thereof shall appoint overseers of the poor therein. 20 Vict. c. 19, s. 1. And with respect to any other place being or reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, such justices may appoint overseers of the poor therein, notwithstanding anything contained in stat. 7 & 8 Vict. c. 101. *Id.* s. 1. Or the justices may appoint one householder only as overseer. *Id.* s. 2. The owners and occupiers of an extra-parochial place may, with consent of two-thirds in value, be annexed to an adjoining parish. *Id.* s. 4.

*When.*] Overseers shall be appointed on the 25th March, or within fourteen days next after it. 54 Geo. 3, c. 91. This statute, however, is directory only, and does not render an appointment void which is made at another time. *R. v. Sparrow*, 2 Str. 1123. Thus the justices at special sessions may adjourn the matter to a day beyond the time specified. *R. v. Sneyd et al.*, 9 Dowl. 1001; S. C. nom. *R. v. JJ. of Staffordshire*, 10 Law J. 166, *m.*

Also, if an overseer die, or remove from the place for which he was appointed, or become insolvent, before the expiration of his office, two justices of the peace, on oath thereof made, may appoint another overseer in his stead, who shall continue in office until new overseers are appointed. 17 Geo. 2, c. 38, s. 3.

*How.*] In parishes in counties, overseers are to be "nominated under the hands and seals of two or more justices of the peace in the same county, whereof one to be of the quorum, dwelling in or near the same parish or division where the same parish doth lie;" 43 Eliz. c. 2, s. 1; and the same as to townships or villages. 13 & 14 Car. 2, c. 12, s. 21. In cities or towns or places corporate, the appointments were formerly by the mayors, bailiffs, or other head officers being justices of the peace; 43 Eliz. c. 2, s. 8; and see *R. v. Preston*, 18 Law J. 10, *m.*; but now, by stat. 12 & 13 Vict. c. 8, s. 1, "in every city, town corporate or borough, the justices of the peace having jurisdiction therein [whether they be justices of the city or borough, or of the county in which the same is situate, 15 & 16 Vict. c. 38,] shall have the exclusive right of appointing the overseers of the poor of the several parishes,

townships, or other places separately maintaining their own poor, or of any parts thereof, within the said cities, towns corporate, and boroughs respectively, in like manner and with the same effect as the justices of any county now have in respect of the overseers of the poor of any parish within such county." And if a parish lie in two or more counties—or part within the liberties of a city or town corporate, and part without, then as well the justices of the peace of every county, as also the [justices] of such city or town corporate, shall nominate the overseers; 43 Eliz. c. 2, s. 9; but when appointed, they shall act indiscriminately for the whole parish. *R. v. Butler et al.*, 1 Bott, 16.

In counties, the nomination and appointment take place at a special sessions of the justices of each division of the county. Previously to which, however, two justices direct their precept to the high constable of the hundred, calling for a list of the householders,

And afterwards, upon the return of these lists to the special sessions, the justices nominate two, three, or four of the persons in each list, as the overseers of such parish or township, according to its size and importance, being the number usually appointed. The appointment must be by a majority of the justices present. All the justices present at such special sessions, when overseers are appointed, must be consulted upon the appointment, and the appointment must be by a majority of them. *R. v. J.J. of Lancashire*, MS. T. 1840. Still, however, until the appointment is quashed, the acts of overseers thus appointed will be valid: for instance, a rate made by such overseers is valid, and may be enforced. *Penny v. Slade*, 5 Bing. N. C. 319.

The appointment is drawn up in the following form:—

*Berkshire, to wit: We, two of Her Majesty's justices of the peace for the said county, one whereof is of the quorum, do hereby nominate and appoint A. B. [&c.] being substantial householders of and in the [parish] of —, in the said county, to be overseers of the poor of the said [parish] [together with the churchwardens thereof], for the present year: according to the directions of the statute in such case made and provided. Given under our hands and seals, this — day of —, in the year of our Lord —.*

The words "for the present year," have been holden to be sufficient, as they shall be intended to mean the overseers' year. *R. v. Helling*, 3 Burr. 1904. So, for "one whole year," (*R. v. Jones*, 1 Bott, 27,) or for "one year next ensuing," (*R. v. Burden*, 4 T. R. 778; *R. v. Stubbs*, 2 T. R. 395,) have been holden to be sufficient. After thus appoint-



ing overseers, the justices are *functi officio*, and cannot alter their appointment. *R. v. Great Marlow*, 2 East, 244. A copy of this appointment should be served on each of the overseers named in it.

The overseers thus appointed remain in office for the time only which is thus mentioned in their appointment.

If the magistrates fail to make the appointment, the court of Queen's Bench will compel them to do so by *mandamus*; and, by stat. 43 Eliz. c. 2, s. 10, every justice of the peace of the county dwelling within the division where such default of nomination shall happen, and every mayor, alderman, and head officer of the city or town corporate where such default shall happen, shall forfeit for every such default 5*l.*, to be levied of their goods by warrant from the general sessions of the peace of the said county or city, &c., if they have sessions.

*Appointment, how enforced.*] If any overseer thus appointed refuse to serve the office, he will be guilty of a misdemeanor at common law, for which he may be indicted. *R. v. Jones*, 2 Str. 1146. *R. v. Poynder*, 1 B. & C. 178.

*Appeal against the appointment.*] If any person thus appointed feel himself aggrieved by the appointment, he may appeal against it to the general quarter sessions. 43 Eliz. c. 2, s. 6. And it has been holden also that the parishioners may appeal against the appointment, as parties aggrieved within the meaning of the statute. *R. v. Forrest*, 3 T. R. 38, and see *R. v. JJ. of St. Alban's*, 3 B. & C. 698. The statute makes no mention of notice of appeal; and therefore the notice must be such merely as is required by the practice of the particular sessions to which the party appeals, or at all events reasonable. *R. v. Blues*, 5 E. & B. 291.

The appointment may also be removed into the court of Queen's Bench by *certiorari*, for the purpose of having it quashed. And that court will thereupon examine into the validity of the appointment upon affidavit. *R. v. Standard Hill*, 4 M. & S. 378. But the court have refused to grant a *mandamus* to overseers, commanding them to produce their appointment for the inspection of a rated inhabitant,—the defect suggested to such appointment being properly the subject of an appeal to the sessions. *R. v. Harrison et al.*, 16 Law J. 33, *m.*

## 2. THEIR DUTIES.

*Their Duty in Relieving the Poor in single Parishes, &c., where there are no Guardians or select Vestry, 291.*

*Their Duty in Relieving the Poor in Parishes in Unions or under Select Vestries, 294.*

*Their Duty in connection with the Election of Guardians, 296.*

*Their Duty in Removing the Poor, 297.*

*Their Duty as to the Poor Rate, 301.*

*Their Duties in other Respects, 313.*

*Their Duty in Relieving the Poor in single Parishes, &c., where there are no Guardians or Select Vestry.*

*Parish poor, 291.*

*Able-bodied poor, 291.*

*Casual poor, 292.*

*In the workhouse, 292.*

*Out of the workhouse, 292.*

*Parish poor.*] Under this head "Parish poor," may be classed all poor persons residing in the parish or township, &c., who may become actually chargeable to it, whether such parish or township, &c., be their place of settlement or not. If they be legally settled in the parish, &c., or if they be English and have no place of settlement, the parish officers must continue to relieve them as long as they really require relief; but if they be settled elsewhere, or be natives of Ireland or Scotland, &c., who have not acquired a settlement in this country, they may be removed, in the manner described, p. 214. By stat. 43 Eliz. c. 2, s. 1, the churchwardens and overseers were authorized to set paupers to work; but all this is regulated by the rules of the poor law board.

As a control upon parish officers, the stat. 3 W. & M. c. 11, s. 11, provided that a book should be kept containing the names of those receiving relief, so that the parishioners might examine it, and check the expenditure.

*Able-bodied poor.*] By stat. 4 & 5 Will. 4, c. 76, s. 52, the poor law commissioners were authorized to issue rules as to the relief of able-bodied poor, which must be followed by overseers except in cases of emergency, see *ante*, p. 190.

As to the relief of married women and widows, see *ante*, p. 190.

*Casual poor.*] Casual poor are those poor persons who are not settled in the parish nor reside there, but who happen casually to be there at a time when, from some accident occurring to them, or from their being suddenly afflicted with some illness, they are obliged to resort to the parish officers for relief. These must be relieved by the parish officers of the parish in which they thus become chargeable; and they are not removable to their place of settlement whilst necessarily detained by their illness, or the effects of the accident, &c. *R. v. St. James in Bury St. Edmunds*, 10 East, 25. *R. v. Lawrence, Ludlow*, 4 B. & A. 660. An infant left by its mother is holden to be casual poor. *R. v. Pancras*, 7 Ad. & El. 750. In all such cases it is the duty of the parish or union, where the pauper becomes casual poor, to relieve him, and pay the expenses attending his cure there. *Tomlinson v. Bentall*, 5 B. & C. 738. *Lamb v. Bunce*, 4 M. & S. 275. *Gent v. Tomkins*, 5 B. & C. 746, n. *Atkins v. Bancell*, 2 East, 505. See as to casual poor in unions, *ante*, p. 191.

*In the workhouse.*] By stat. 9 Geo. 1, c. 7, s. 4, any poor person was allowed relief only when lodged in the workhouse. But the person to be relieved can alone be compelled to go into the workhouse, within the meaning of the Act; and therefore where a woman applied for relief for her bastard child, it was holden that the parish officers were not justified in refusing it, because the mother refused to go into the workhouse. *R. v. High et al.*, 3 T. R. 637.

The law remains now the same as under the stat. 9 Geo. 1, c. 7, subject to the control and orders of the poor law commissioners upon the subject.

*Out of the workhouse.*] By stat. 3 W. & M. c. 11, s. 11, a list is to be made of poor persons to whom the parishioners in vestry agree that relief shall be given; and the overseers shall not give relief to any other persons, without an order from a justice of the peace.

And by stat. 9 Geo. 1, c. 7, s. 1, after reciting this Act, it is enacted that "no justice of the peace shall order relief to any poor person dwelling in any parish,—until oath be made before such justice of some matter which he shall judge to be a reasonable cause or ground for having such relief,—and that the same person had by himself, herself, or some other, applied for relief to the parishioners of the parish, at some vestry or other public meeting of the said parishioners, or to two of the overseers of the poor of such parish, and was by them refused to be relieved,—and until such justice had summoned two of the overseers of the poor to show cause why such relief should

not be given, and the person so summoned hath been heard, or made default to appear before such justice."

And the person whom any such justice of peace shall think fit to order to be relieved, shall be entered in such book or books so to be kept by the parish, as one of those who are to receive collection, as long as the cause for such relief continues, and no longer; and no officer of any parish shall (except upon sudden and emergent occasion) bring to the account of the parish any monies he shall give to any poor person of the same parish, who is not registered in such book or books to be kept by the said parish, as a person entitled to receive collection, on pain of forfeiting the sum of 5*l.*, to be levied by distress and sale, by warrant of any two or more justices of the peace of the same county, who shall have examined into and found him guilty of such offence: which said sum shall be applied to and for the use of the poor of the said parish, by direction of the said justices of the peace. 9 Geo. 1, c. 7, s. 2. The conviction for this offence is in the ordinary form, stat. 11 & 12 Vict. c. 43, sch. I. 1, and the warrant of distress may be in the form there stated.

If the pauper be in another parish, the order cannot compel the overseers to go there to relieve him, or to send relief to him, even although he be so unwell that he cannot be removed; *Clypton St. Mary's v. Ravistock in Devon*, Set. & Rem. 31, pl. 49; he must either come personally to claim relief, or he must apply to the overseers of the parish where he is residing, who may thereupon obtain an order to remove him, or, if from illness he cannot be removed, the order may be suspended. The only exception to this is, in the case of infants having a different settlement from their mother, and residing in another parish with their mother for nurture; if they become chargeable to such other parish, any justice acting for such parish may make an order for their relief upon the overseers, &c., of the parish where they are settled, (*R. v. Hemlington*, Cald. 6; *Shermanbury v. Bolney*, Carth. 279; *Wrangford v. Brandon*, Carth. 449,) provided the mother or her husband be not able to maintain them. See 4 & 5 Will. 4, c. 76, ss. 56, 57, 71. The court however will not grant a *mandamus* to justices to compel them to make such an order; *R. v. JJ. of Middlesex*, 4 B. & A. 298; at least not until the place of settlement of the children shall have first been adjudged.

The relief in such cases is given in money or food, &c. But there are other ways in which overseers are enabled by law to relieve the poor. They may set up trades for their employment. 3 Chas. 1, c. 4, s. 22; see 22 Geo. 3, c. 83, s. 32. They may provide land for their employment. 59 Geo. 3, c. 12, s. 12; 1 & 2 Will. 4, c. 42, s. 1. They may inclose waste land

for the same purpose. 1 & 2 Will. 4, c. 42, s. 2. They may let land to them in small portions. 59 Geo. 3, c. 12, s. 13; 1 & 2 Will. 4, c. 42, ss. 1—10. They may build houses for them upon the waste. 43 Eliz. c. 2, s. 6. They may contract with others for their maintenance and management. 9 Geo. 1, c. 7, s. 4; 45 Geo. 3, c. 54; 22 Geo. 3, c. 83, s. 2; 50 Geo. 3, c. 60, s. 2; 4 & 5 Will. 4, c. 76, s. 49; 12 & 13 Vict. c. 13, s. 1. They may compel their parents or relations to contribute to their maintenance. 43 Eliz. c. 2, s. 7; 59 Geo. 3, 12, s. 26; 4 & 5 Will. 4, c. 76, s. 78. They may compel husbands and fathers to repay the amount of relief given to their wives and children. 4 & 5 Will. 4, c. 76, ss. 56, 57. They may proceed to punish persons who, being able to maintain themselves or families, refuse or neglect to do so; 5 Geo. 4, c. 83, s. 3; or persons running away, and leaving their wife or child chargeable to the parish. *Id.* They may charge widows with relief given to their children; 4 & 5 Will. 4, c. 76, s. 56; or the mothers of illegitimate children, with relief given to the children. *Id.* s. 71.

*Their Duty in Relieving the Poor in Parishes, in Unions, or under Select Vestries.*

By stat. 4 & 5 Will. 4, c. 76, s. 54, the ordering, giving, and directing of all relief to the poor of any parish, which, according to the provisions of stat. 22 Geo. 3, c. 83, or 59 Geo. 3, c. 12, or of 1 & 2 Will. 4, c. 80, or of this Act, or of any local Acts, shall be under the government and control of any guardians of the poor, or of any select vestry, shall belong exclusively to such guardians of the poor, or select vestry, according to the respective provisions of the Acts under which such guardians or select vestry may have been or shall be appointed; and it shall not be lawful for any overseer of the poor to give any further or other relief or allowance from the poor rate, than such as shall be ordered by such guardians or select vestry, except—

1st. "In cases of sudden and urgent necessity, in which cases he is hereby required to give such temporary relief as each case shall require, in articles of absolute necessity, but not in money, and whether the applicant for relief be settled in the parish where he shall apply for relief or not: provided always, that in case such overseer shall refuse or neglect to give such necessary relief in any such case of necessity to poor persons not settled nor usually residing in the parish to which such overseer belongs, it shall and may be lawful for any justice of the peace to order the said overseer, by writing under his hand and seal, to give such temporary relief in articles of absolute necessity, as the case shall require, but not in money;

and in case such overseer shall disobey such order, he shall, on conviction before two justices, forfeit any sum not exceeding 5*l.* which such justices shall order :—

2ndly. "That any justice of the peace shall be empowered to give a similar order for medical relief (only) to any parishioner, as well as out-parishioner, where any case of sudden and dangerous illness may require it; and any overseer shall be liable to the same penalties as aforesaid for disobeying such order: but it shall not be lawful for any justice or justices to order relief to any person or persons from the poor rates of any such parish, except as hereinbefore provided." *Id.* s. 54.

As to the power of the overseers to give orders for the admission of paupers to a union workhouse, see *ante*, tit. "*Guardians of the Poor*," p. 195.

The duties of churchwardens and overseers of parishes, &c., in unions, are thus laid down in an order of the poor law commissioners, dated the 22nd of April, 1842 :—

*Art. 1.* If any overseer of the poor of any parish shall, in any case of sudden and urgent necessity, have given temporary relief to any poor person in articles of necessity, or, in any case of sudden and dangerous illness, shall have given an order for medical relief, the said overseer shall forthwith report such case in writing to the relieving officer of the district, or to the board of guardians of the union, and the amount of such relief, or the fact of having made such order.

*Art. 2.* If any overseer of the poor of any parish receive an order under the hands and seal of two justices, according to the provisions of the said Act, directing relief to be given to any aged or infirm person, without such person being required to reside in any workhouse, he shall forthwith transmit the same to the relieving officer of the district, to be laid before the guardians at their next meeting, that they may be enabled without delay to give to the relieving officer the necessary directions, as to the amount and nature of the relief to be given.

*Art. 3.* If any overseer receive an order for medical relief from any justice in case of sudden and dangerous illness, he shall, as soon as may be after complying with such order, report the fact of his having received the same, and the manner in which he has complied with it, in writing to the relieving officer of the district, or to the board of guardians of the union.

*Art. 5.* And we do further order and direct the overseers of the poor of every parish in the union—

Firstly. From time to time to provide *rate books* according to the form (A.) hereunto annexed; and duly and punctually to make the entries therein of the several matters mentioned

in the headings of the several columns of the said form; and to cause every rate for the relief of the poor in the township, and the allowance of such rate by the justices, to be recorded in the said rate book.

Secondly. To pay over from time to time out of the poor rates collected, all such sums as by any order of the guardians addressed to them in writing, according to the form set forth in the order of the poor law commissioners, bearing date the 24th July, 1847, shall be directed to be provided from the poor rates of the parish (see *R. v. Overseers of Todmorden and Walsden*, 1 Q. B. Rep. 185); and to pay over such sums to such person or persons, at such times and places as by the same order shall be directed, and to take the receipt of such person or persons; and to produce such order and such receipt as their vouchers for such payments before the auditor of the said union in passing their quarterly accounts.

Thirdly. To submit, within forty days after each of the following days, namely, Lady Day, Midsummer Day, Michaelmas Day, and Christmas Day, to the auditor of the union, a distinct account and balance sheet, exhibiting the amount collected by them and the amount disbursed by them during the previous quarter, together with the proper vouchers for the same.

Fourthly. To enter in some book, to be from time to time provided for that purpose, the names and addresses of the owners and proxies, who shall send statements of their claims to vote, and the assessment of the poor rate on the property in respect whereof they respectively claim to vote, which book may be kept in the form annexed to the order.

*Their Duty in connection with the Election of Guardians.*

By Art. 4 of the before-mentioned order of 22nd April, 1842, the overseers are to perform such duties in connection with the election of guardians for the union, as may be imposed upon the overseers by any regulations of the poor law commissioners in force at the time.

The duties of the overseers in connection with the election of guardians, as prescribed by the consolidated order of the poor law commissioners, are stated *ante*, pp. 176, 179.

By the order of 22nd April, 1842, the overseers are further required to enter in some book, to be from time to time provided for that purpose, the names and addresses of the owners and proxies, who shall send statements of their claims to vote, and the assessment of the poor rate on the property, in respect whereof they respectively claim to vote, in pursuance of the regulation in the 7 & 8 Vict. c. 101, s. 15.

*Their Duty in Removing the Poor.*

<p><i>In what cases generally, and how, 297.</i></p> <p><i>In particular cases, 298.</i></p>	<p><i>Irish and Scotch paupers, see ante, 214.</i></p>
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*In what cases generally, and how.]* When any persons, not being casual poor, become chargeable to a parish, the overseer, after relieving them, should examine into their place of settlement. His inquiries are of course at first made of the paupers themselves; and then of the masters, landlords, and others mentioned by them in their statement. If upon this inquiry it turn out that the paupers are settled in the parish or township to which they have become chargeable, the overseer, or relieving officer (if in a union) must continue to relieve them so long as they continue chargeable. But if the paupers appear to be settled in some other parish or township, and the overseer have obtained satisfactory evidence of it, he should take them before two magistrates of the county or borough in which his parish or township is situate, make his complaint that they have become chargeable to his parish and that their settlement is elsewhere, adduce the evidence to prove it, and obtain an order for their removal. Let duplicates be had of the order, one to serve, and the other to keep as evidence.

The overseer must then draw a notice of chargeability, directed to the churchwardens and overseers of the settlement parish, or to the overseers, if a township; and he must also draw a statement of the grounds of removal, and get them signed by a majority of the churchwardens and overseers, if a parish, or by a majority of the overseers, if a township. These, together with one of the duplicates of the order of removal, must be sent "by post or otherwise" to the churchwardens and overseers of the settlement parish, or to the overseers, if a township. And though they reach such overseers on a Sunday it is good service. *R. v. Leominster*, 2 B. & S. 391. This sending by post should be done without delay; for the opposite parish will be liable for the costs of maintenance from such time only as the notice of chargeability shall have been sent; and in the case of a suspended order, the opposite parish will not be liable for costs of maintenance at all, unless such notice, duplicate, or copy of the order, and grounds of removal have been sent to them within ten days of such order being made. 4 & 5 Will. 4, c. 76, s. 84.

The pauper, however, cannot be removed until twenty-one days after the notice of chargeability, with a copy or counterpart of the order of removal, shall have been sent to the over-



seers of the opposite parish, unless such overseers agree to submit to the order; 4 & 5 Will. 4, c. 76, s. 79; and if within such period of twenty-one days a copy of the depositions shall be applied for, (which application must be made to the clerk of the justices, *R. v. St. Alkmund*, 27 J. P. 263,) the pauper shall not be removed until after the expiration of a further period of fourteen days after the sending of such copy. 11 & 12 Vict. c. 81, s. 9. The day on which the notice is delivered by the post is the day on which it is sent. *R. v. Recorder of Richmond*, E. B. & E. 253.

If at the time of making the order, the pauper or any of his family mentioned in the order, is unable to travel, by reason of sickness or other infirmity, or if it would be dangerous for him to do so,—upon proving this to the justices making the order, or to any other two justices of the same county, &c., they will suspend the execution of the warrant, and indorse such suspension on the order. And afterwards, if the party recover, and may be removed with safety, or if he die, and his family are to be removed, and this be represented to the same justices who suspended the order, or to any two justices of the same county, they will make another indorsement on the order, authorizing and directing the execution of it accordingly, and will order the overseers of the opposite parishes to pay the removing parish a certain sum for the charges incurred by the suspension. See *Arch. Poor Law*, 11th ed., 757.

The paupers are removed by the churchwardens and overseers of the removing parish, &c., or one of them, or by any proper person they may employ for the purpose. 54 Geo. 3, c. 170, s. 10. And they may be delivered to the churchwardens and overseers of the settlement parish to whom the order is directed, or to any one of them, who is compellable to receive them, under a penalty of 5*l*. 8 W. & M. c. 11, s. 10. Or, by stat. 9 & 10 Vict. c. 66, s. 7, they may be delivered, with the order, at the workhouse of the parish, or of the union to which the parish belongs, to any officer of such workhouse.

*In particular cases.*] A man cannot be removed from a parish in which he has an estate, whether he reside upon the estate or not; *Arch. P. L.* 688; and this, even in the case of an estate purchased for a sum under 30*l*. 9 Geo. 1, c. 7, s. 5. But a man renting a tenement in the parish may, if chargeable, be removed at any time before he obtains a settlement by it. *R. v. Ampthill*, 2 B. & C. 847.

If a wife become chargeable in the absence of her husband, she may be removed to the place of his last legal settlement, if he have one, or if not, then to the place of her maiden

settlement. *Arch. R. L.* 689. But where a wife is residing with her husband, and he has a settlement, she cannot be removed alone, so as to separate her from her husband, without the consent of both; *Id.* 593; nor can she be removed so as to separate her from him, without the consent of both, although he have no settlement. *R. v. Leeds*, 13 Law J. 107, *m.* And by stat. 9 & 10 Vict. c. 66, s. 1, it is provided, that whenever any person shall have a wife or children, having no other settlement than his or her own, such wife and children shall be removable whenever he or she [if then present in the parish] would be removable, and shall not be removable when he or she is not removable. See *Arch. P. L.* 692.

No child, under the age of sixteen, whether legitimate or illegitimate, residing in any parish with his or her father or mother, stepfather or stepmother, or reputed father, shall be removed, nor shall any order be granted for the removal of such child from such parish, in any case where such father, mother, stepfather, stepmother, or reputed father, may not lawfully be removed from such parish. 9 & 10 Vict. c. 66, s. 3; and see sect. 1, *supra*. And a child under seven years of age, cannot be removed from its parent, under any circumstances. *Arch. P. L.* 693.

As to sick persons, it is enacted by stat. 9 & 10 Vict. c. 66, s. 4, that no order shall be granted for the removal of any person becoming chargeable in respect of relief made necessary by sickness, in his or her own person, (*R. v. St. George*, 2 B. & S. 317,) or accident, unless the justices granting the order shall therein state that they are satisfied that the sickness or accident will produce permanent disability. And the overseer must produce evidence accordingly, at the time he applies for the order. Pregnancy is not sickness in this sense. *R. v. Huddersfield*, 26 Law J. 312, Q. B. The decision of the removing justices is conclusive as to the sickness. *R. v. St. Mary, Whittlesea*, 3 B. & S. 432.

Servants may be removed, if chargeable. *Arch. P. L.* 695.

A girl pregnant of a bastard child, was formerly deemed actually chargeable, and might be removed. But this is no longer so. 4 & 5 Will. 4, c. 76, s. 69.

Casual poor, we have seen (*ante*, p. 292), are not removable; but provision is made by stat. 11 & 12 Vict. c. 110, s. 2, for repaying to the parish the sums they shall expend in their relief.

Certificate-men, if they become chargeable, may be removed to the certifying parish; or if that be not their actual place of settlement, they may be removed either there or to their place of settlement. *Arch. P. L.* 699. And the removing parish shall be entitled to be reimbursed any expenses they

may have incurred in their relief, by the parish to which they are removed. 3 Geo. 2, c. 29, s. 9.

As to convicts, vagrants, reputed thieves, &c.,—by stat. 35 Geo. 3, c. 101, s. 5, "every person who shall have been convicted of larceny, or any other felony,—or who by the laws now in being, shall be deemed a rogue, vagabond, idle, or disorderly person,—or who shall appear to any two or more justices of the peace of the division wherein such person shall reside, upon the oath of one or more credible witness or witnesses, to be a person of evil fame, or a reputed thief, such person not being able to give a satisfactory account of himself or herself, or of his or her way of living,—shall be considered as a person actually chargeable, within the true intent and meaning of this Act, to the parish in which such person shall reside, and shall be liable to be removed to the parish of his or her last legal settlement, by the order of the said justices of the peace, whereof one to be of the quorum of the division where any such person shall reside."

And lastly, by stat. 9 & 10 Vict. c. 66, s. 1, no person shall be removed, nor shall any order be granted for the removal of any person, from any parish in which such person shall have resided for three years [continuously, without any break in such residence,]—not including therein the time during which such person shall be a prisoner in a prison,—or shall be serving Her Majesty as a soldier, marine, or sailor, or residing as in-pensioner in Greenwich or Chelsea hospitals,—or shall be confined in a lunatic asylum, or house duly licensed, or hospital registered for the reception of lunatics, or as a patient in an hospital,—or during which any such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bond fide* charitable gift. 24 & 25 Vict. c. 55, s. 4. See *Arch. P. L.* 701.

As to an appeal against an order of removal, see *Arch. P. L.* 774.

For the duties of the overseers in respect to the removal of Irish and Scotch paupers, see tit. "*Guardians of the Poor*," p. 214.

*Their Duty as to the Poor Rate.*

1. *Valuation Lists*, 301.
2. *Making and collecting the Rate*, 302.
3. *Levying it*, 307.

1. *Their Duty as to Valuation Lists.*

*Making valuation lists*, 301.  
*Alteration of lists*, 301.

*Settlement of lists*, 301.  
*Expenses of valuation*, 302.

*Making valuation lists.*] In poor law unions an assessment committee is appointed as stated, *ante*, p. 184. When such is the case, the committee may require, under a penalty of 20*l.*, the overseers and assistant overseers having the custody of the books of assessment of any taxes or rates, &c., to produce the same, and make returns in writing, or to permit extracts to be made. 25 & 26 Vict. c. 103, ss. 13, 40. The overseers are also bound, if not already made, and when required by the assessment committee, to make, within a time appointed, a list of all the rateable hereditaments in the parish, with the annual value thereof, and if the last valuation is incorrect, to revise it, and this list is to be signed by the overseers, and is called the valuation list. *Id.* ss. 14, 16. A person may be appointed, if necessary, by the committee to make and sign such list instead of the overseers. *Id.* s. 16. The overseers are to keep this list with their other books; and when deposited, shall give public notice of such deposit on the Sunday next following such deposit, and it may be inspected as in the case of a poor rate; and at the expiration of fourteen days after the notice given, it is to be transmitted to the committee. *Id.* s. 17.

*Alterations of valuation lists.*] The overseers, if they think their parish is aggrieved by any unfairness or incorrectness in the valuation, may within twenty-eight days after the notice of deposit, give notice to the committee and the party interested of the objection, and the grounds thereof. *Id.* s. 18. These objections are to be heard and disposed of before the committee. *Id.* s. 19. And the committee may correct or confirm the valuation, or appoint a person to survey and value, after which the list is to be deposited and kept by the overseers, and fresh notice thereof given as before, *Id.* ss. 20, 21, 23, 27.

*Settlement of valuation lists.*] When the valuation list has been settled, all rates to the poor are to be founded thereon. *Id.* s. 28. And in computing the amount of contribution to the common fund of the union, the annual rateable value of

the property in such parishes is to be taken from the valuation list. *Id.* s. 30. If the overseers of one parish think another parish is under-rated, they may appeal to the quarter sessions, after giving fourteen days' notice thereof. *Id.* ss. 32, 33. And the quarter sessions may appoint a surveyor to revalue, and the costs to be paid by either the appellant or respondent party. *Id.* s. 34.

*Expenses of valuation.*] The expenses of making any valuation and valuation list of any parish, or any of such expenses, whether such valuation and valuation list respectively be made by the overseers, or by any person appointed by the committee, shall be charged upon the poor rates of such parish if the valuation made by direction of the committee shall exceed by one-sixth the amount of the valuation delivered to them by the overseers, and upon the common fund of the said union, if the valuation so made as last mentioned shall not exceed by one-sixth the valuation so delivered as aforesaid.

## 2. Duty of the Overseers in making the Rate.

*On whom,* 302.

*How,* 303.

*New valuation of the rateable property,* 303.

*Form of the rate,* 303.

*Its allowance and publication,* 306.

*Inspection of it to be granted,* 306.

*Collection of it,* 307.

*On whom.*] By stat. 43 Eliz. c. 2, s. 1, the poor rate is to be made on every inhabitant,—parson, vicar,—and on every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines or saleable underwoods, in the parish. As to the cases in which the owners of small tenements may be rated instead of the occupiers, see *post*, tit. “*Vestry*.” Formerly, inhabitants, that is to say, all persons residing within the parish or township, were rated there in respect of all visible personal property, locally situate within the parish, and producing profit. But by stat. 3 & 4 Vict. c. 80, (which is continued annually,) overseers are prohibited from taxing any inhabitant of a parish or township, as such inhabitant, “in respect of his ability, derived from the profits of stock in trade or any other property, for or towards the relief of the poor;” but this is not to affect the liability of any parson or vicar, or of any occupier of land, houses, tithes impropriate, appropriations of tithes, coal mines or saleable underwoods. The parson or vicar of a parish is liable to be rated to the poor for his parsonage or vicarage house, and for his glebe lands or any other real property, if in his occupation, in precisely the same way as other occupiers of land; they are

also rateable for their tithes, as are also all impropriators of tithes in the parish. See *Arch. P. L.* 131. They and the occupiers of lands, houses, &c., in the parish, are now in fact the only ratepayers. If the vestry have adopted the Small Tenements Act, then the owners of tenements not exceeding 6*l.* in value shall be rated at three-fourths of such amount, or they may pay for a year on one-half of such amount. 13 & 14 Vict. c. 99; 14 & 15 Vict. c. 39.

*How.]* The parties above mentioned are to be rated on an estimate of the net annual value of the several hereditaments which they occupy in the parish,—that is to say, at the rent the same might reasonably be expected to let at from year to year, (the tenant paying all the usual tenant's rates and taxes, and tithe commutation rentcharge, if any,) deducting therefrom the probable average annual cost of the repairs, insurance and other expenses, if any, necessary to maintain them in a state to command such rent. 6 & 7 Will. 4, c. 96, s. 1. As to the particular mode of rating the different species of property, see *Arch. P. L.* 149, 236.

*New valuation of the rateable property.]* If a new valuation of the lands, &c., in the parish or part of it, become necessary, the poor law commissioners, on the application of the guardians of a union or parish, or of a majority of the churchwardens and overseers, may order a survey and valuation to be made accordingly. 6 & 7 Will. 4, c. 96, ss. 3, 4. But a valuation of part only of the rateable property in a parish may be obtained by the guardians without an order of the poor law board, 11 & 12 Vict. c. 110, s. 7. In unions the assessment committee will give directions as to this matter, as stated, *ante*, pp. 184, 301.

*Form of the rate.]* Every such rate shall, in addition to any other particular which the form of making out such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns, in the form given by the Act, so far as the same can be ascertained; and the churchwardens and overseers or other officers whose duty it may be to make and levy the said rate, or such a number of the said churchwardens and overseers, or other officers as are competent to the making and levying of the same [that is to say, a majority of them], shall, before the rate is allowed by the justices, sign the declaration at the foot of the said form. 6 & 7 Will. 4, c. 96, s. 2. If the declaration here mentioned be not made and signed, the rate shall be of no force or validity. *Id.* R. v. *Fordham*, 11 Ad. & El. 73.

The following is the form of the poor rate, as given in the schedule to the statute:—

## Form of

*An Assessment for the Relief of the Poor of the Parish of Merton, in the law, made this thirtieth day of March, in the year of our Lord One Thousand*

No.	Arrears due, or if excused.	Name of Occupier.	Name of Owner.	Description of Property rated.
1	£ s. d.	James Smith.	John Green.	Land and Buildings.
2	- - -	Ditto.	Ditto.	House and Garden.
3 {	- - - 7½	John Poor.	Ditto.	House.
Excused.				
£c.	£c.	£c.	£c.	£c.

Declaration of Overseers and Churchwardens.—We, ———, do rate to be true and correct, so far as we have been able to

The following is the form of the Rate Book, required by the

ARREARS.			RATE.							
Number.	Due, or if excused.	If excused, write the word "excused."	Name of Occupier.	Name of Owner.	Description of Property rated.	Name or Situation of Property.	Estimated Extent.	Gross Estimated Rental.	Rateable Value.	Rate in the Pound.
1	2	3	4	5	6	7	8	9	10	11
	£ s. d.						A. R. P.	£ s. d.	£ s. d.	£ s. d.

We ——— do declare the several particulars specified in the respective columns of the above rate to be true and correct so far as we have been able to ascertain them, to which end we have used our best endeavours.

We do also declare that the above rate amounts in the whole to the sum of ——— pounds, ——— shillings, and ——— pence.

———, Overseer. ———, Overseer.  
———, Churchwarden. ———, Churchwarden.

# Poor Rate.

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County of Surrey, and for other purposes chargeable thereon according to Eight Hundred and Sixty—, after the rate of Sixpence in the Pound.

Name or Situation of Property.	Estimated Extent.	Gross Estimated Rental.	Rateable Value.	Rate at 6d. in the Pound.
	A. R. P.	£ s. d.	£ s. d.	£ s. d.
Whiteacre Farm.	40 0 0	60 0 0	55 0 0	1 7 6
In West Street.	0 1 0	30 0 0	25 0 0	0 12 6
In Brick Lane.	- - -	1 10 0	1 5 0	0 0 7½
§c.	§c.	§c.	§c.	§c.

declare the several Particulars specified in the respective columns of the above ascertain them, to which end we have used our best endeavours.

THOMAS JONES, Overseer.

JOHN THOMAS, [Churchwarden, &c. &c.]

Poor Law Board to be kept, by their Order of the 18th November, 1850 :—

COLLECTION.								
Amount of Rate Assessed upon and payable by the Owner, instead of the Occupier, by virtue of the Statute or Statutes in that behalf. 12	Recoverable Arrears of former Rates 13	Total Amount to be Collected. 14	Amount actually Collected. 15	Uncollected at Balancing this Book.				
				Recoverable Arrear at balancing the Book. 16	Irrecoverable at balancing the Book			
					Amount legally excused. 17	Otherwise not Recoverable		
£	s.	d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	Amount. 18	Causes. 1



By the order of the poor law commissioners, 17th March, 1847, the overseers are to provide rate books; and in every such rate book shall be inserted the particulars of the assessment and collection of the poor rate of the parish, as set forth in the form numbered 1; and in addition to the declaration required by the Act passed in the 7th year of the reign of King William the Fourth, intituled "An Act to regulate Parochial Assessments," such overseers shall, before any rate is presented to the justices for their allowance, sign a declaration, in words at length, of the total amount of the rate so presented for allowance, according to the form in the last page.

*Its allowance and publication.*] After the rate is made and signed, it must be presented to two justices of the peace of the county or borough, &c., in which the parish or township is situate, for their allowance, and they, as a matter of course, write their allowance at the foot of it, and sign it. This is a mere ministerial act on the part of the justices, in which they are not called upon to exercise their judgment, and they cannot refuse it. *Arch. P. L.* 238.

On the Sunday next after the rate has been thus allowed, it must be published, (17 Geo. 2, c. 3, s. 1.)—that is to say, a notice of its having being made and published must be written out, and copies thereof, either in writing or in print, or partly in writing and partly in print, shall be affixed "on or near to the doors" of all the churches or chapels [of the church of England] within the parish or place, previously to divine service. 7 Will. 4 & 1 Vict. c. 35, s. 2. See *Arch. P. L.* 238, 239. It is enough if it is previous to the usual afternoon service. *Burnley v. Methley*, 1 E. & E. 789. If this be not done, at the time here mentioned, the rate is altogether void, and cannot be enforced. 17 Geo. 2, c. 3, s. 1. *R. v. Newcomb*, 4 T. R. 368. No signature by the overseers is necessary. *Burnley v. Methley*, 1 E. & E. 789.

*Inspection of it to be granted.*] By stat. 6 & 7 Will. 4, c. 96, s. 5, it shall be lawful for any person rated, at all reasonable times, to take copies of or extracts from the rate, without paying anything for the same; and in case the person having the custody of such rate, shall refuse to permit such person to take copies thereof or extracts therefrom, he shall forfeit and pay any sum not exceeding 5*l.*, to be recovered in a summary way before any justice of the peace having jurisdiction in the parish or place. Or an action may be maintained against him for a penalty of 20*l.*, by stat. 17 Geo. 2, c. 3. The justices of the county are also entitled to inspection. 55 Geo. 3, c. 51, s. 9; 15 & 16 Vict. c. 81, s. 5. So are claimants to vote for

members of parliament,—6 & 7 Vict. c. 18, s. 16,—surveyors of highways,—5 & 6 Will. 4, c. 80, s. 38,—officers of local boards of health,—11 & 12 Vict. c. 63, ss. 22, 88; 21 & 22 Vict. c. 98, s. 56,—and of inland revenue. 43 Geo. 3, c. 161, s. 16; 5 & 6 Vict. c. 35, ss. 75, 76.

*Collection of it.*] The rate must be collected by the overseers, or some or one of them; or by the assistant overseer, if one be appointed, and the collection of the rate be one of the duties assigned to him; or by the rate collector. See upon this subject, more particularly, *ante*, p. 109. If there is a vestry clerk, he is to advise the overseers as to the recovery of arrears. 13 & 14 Vict. c. 57, s. 7.

### 3. Duty of Overseers in levying a Poor Rate.

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*In what cases.*] By stat. 43 Eliz. c. 2, s. 4, it shall be lawful as well for the present as subsequent churchwardens and overseers (whether the immediate successors or not of those who made the rate: *East Dean v. Everett*, 30 L. J. Q. B. 186), or any of them, by warrant from any two such justices of the county, &c., in which the parish is situate, to levy the said sums rated, and all arrearages of every one that shall refuse to contribute according as they shall be assessed, by distress and sale of the offender's goods, rendering to the parties the overplus; and in default of such distress, any two such justices of the peace may commit him or them to the common gaol of the county. See also sect. 13, to the same effect. And a churchwarden or overseer is as liable to be distrained upon for the amount of his rate, as any other person. *Skingley v. Surridge et al.*, 12 Law J. 122, m.

*Rate demanded.*] The rate must be demanded of the party. *R. v. Benn and Church*, 6 T. R. 198. And the exact sum legally due must be demanded, and the distress be for that sum and no more. *Hurrell v. Wink*, 8 Taunt. 369. Even a fraction of a farthing more than the exact sum will vitiate

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the demand. *Morton v. Bremner*, 8 C. B. N. S. 791. And the ratepayer's proper remedy in such a case is to appeal. *Bavin v. Hutchinson*, 31 L. J. 263, Q. B.

*Complaint.*] If the rate, when thus demanded, be not paid, the churchwardens and overseers, or any one of them, may make complaint thereof to a justice of the peace of the county, &c., and obtain a summons for the party and serve it.

The following may be the form of the complaint:—

*Complaint against one Ratepayer.*

— } Be it remembered that on the — day of —, in  
to wit. } the year of our Lord —, the churchwardens  
and overseers of the poor of the parish of —, in the  
county of — aforesaid, by C. D., one of the said overseers,  
complain to the undersigned, [one] of Her Majesty's jus-  
tices of the peace in and for the said [county], that A. B.,\* of  
the said [parish], being a person duly rated and assessed to  
the relief of the poor of the said parish, in and by a rate  
made on the — day of —, in the year —, in the sum  
of —, hath not paid the same or any part thereof, but  
hath refused so to do: wherefore the said churchwardens  
and overseers by C. D. aforesaid, pray that the said A. B.  
may be summoned to appear before two of Her Majesty's  
justices of the peace, to show cause why he hath not paid and  
refuses to pay the said sum. C. D.

Made and exhibited before me —, }  
at —, in the county of —, on }  
this — day of —, 18 . }  
E. F.)

\* Or, several ratepayers may be included in one complaint.

*Summons, &c.*] By stat. 12 & 13 Vict. c. 14, s. 5, every summons to be issued against any person for non-payment of any sum for which he or she is or shall be so rated or assessed as aforesaid, shall be directed to such person, and may be in the form (B.) in the schedule to this Act annexed, or in any form to the like effect; and the same may be served by any churchwarden or overseer of the poor, or constable, or other person to whom it shall be delivered for that purpose, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him or her at his or her last place of abode; and the person who shall serve the same in manner aforesaid shall

attend at the time and place and before the justices in the said summons mentioned, to depose if necessary to the service of the said summons.

*Warrant of distress.*] If the party summoned attend, but show no sufficient cause for non-payment of the rate, the justices will grant the distress warrant against him. Where many ratepayers are in the same situation, a warrant should be applied for against one only in the first instance. *R. v. Paynter*, 14 Law J. 179, *m*; 7 Q. B. 255. *Paynter v. The Queen*, 16 Law J. 136, *m*. Or if, upon the hearing, such party shall fail to appear, then if it be proved that such summons was duly served, it shall be lawful for such justices to proceed *ex parte*. 12 & 13 Vict. c. 14, s. 5.

And by sect. 3, for the saving of expense in the levying of any sum or sums for rate and costs as aforesaid, it shall be lawful to make and issue one warrant of distress against any number of persons neglecting or refusing to pay the same, in the form in the schedule to this Act annexed.

And by sect. 4, the warrant may be directed to the churchwardens and overseers of the poor, or the overseers of the poor, and to the constable of the parish or township, and to any other person or persons, or to any one or more of them, as by the justices granting the same shall be deemed fit.

As to the costs of the distress, where the amount does not exceed 20*l*. see *Arch. J. P.*, vol. i. p. 429.

Formerly justices often refused to grant a distress warrant for a poor rate, as it might possibly subject them to an action of trespass. Where a person was rated in the parish of A., for lands that were really situated in the parish of B., and being distrained upon, he brought an action of trespass against the justices who signed the distress warrant: the court held that the action well lay; for as the plaintiff had no rateable property in the parish, the justices had no jurisdiction to grant the distress warrant. *Weaver v. Price et al.*, 3 B. & Ad. 409. And for this reason it was, that the court of Queen's Bench formerly would not grant a mandamus to justices, commanding them to grant a distress warrant for a poor rate, where there was any feasible doubt of the validity of the rate, or liability of the party. *R. v. Newcomb*, 4 T. R. 368. And *Arch. Cr. Off. Pr.* "Mandamus," Now, however, by a recent statute, (6 & 7 Vict. c. 67, s. 3,) "no action, suit, or any other proceeding shall be commenced or prosecuted against any person or persons whatsoever, for or by reason of anything done in obedience to any peremptory mandamus, issued by any court having authority to issue writs of mandamus." And by a still more recent Act, 11 & 12

Vict. c. 44, s. 5, "in all cases where a justice or justices of the peace shall refuse to do any act relating to the duties of his or their office as such justice or justices, it shall be lawful for the party requiring such act to be done, to apply to Her Majesty's court of Queen's Bench, upon an affidavit of the facts, for a rule calling upon such justice or justices, and also the party to be affected by such act, to show cause why such act should not be done; and if after due service of such rule good cause shall not be shown against it, the said court may make the same absolute, with or without or on payment of costs, as to them shall seem meet; and the said justice or justices, upon being served with such rule absolute, shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices for having obeyed such rule, and done such act so thereby required as aforesaid." And lastly, by the 4th section of the same Act, "where any poor rate shall be made, allowed, and published, and a warrant of distress shall issue against any person named and rated therein, no action shall be brought against the justice or justices who shall have granted such warrant, by reason of any irregularity or defect in the said rate, or by reason of such person not being liable to be rated therein."

*Costs.*] By stat. 12 & 13 Vict. c. 14, s. 1, justices of the peace, if in their discretion they shall so think fit, may, in any warrant of distress, order that the costs and expenses which such overseers shall have incurred, shall also be levied of the goods and chattels of the person or persons against whom such warrant shall be granted, together with the reasonable charges of the taking, keeping, and selling of the said distress. And by sect. 7, in all cases where such costs and expenses as aforesaid shall have been paid and received, or any proceedings taken or imprisonment had for non-payment of the same, no action or other proceedings shall be had or proceeded in for or in respect of the same. Where, however, several rates and taxes are due by one person, they should all be included in one summons, otherwise the costs of one only will be allowed. 25 & 26 Vict. c. 82.

*Commitment in default of distress.*] By stat. 12 & 13 Vict. c. 14, s. 2, when to any warrant of distress no sufficient goods or chattels are found, whereon to levy such sum or sums, together with the costs of or occasioned by the levying of the same, it shall be lawful for any two or more justices to issue their warrant of commitment against the person with relation to whom such return shall be so made as aforesaid, and thereby order such person to be imprisoned in the common gaol or house of correction for any time not exceeding three calendar

months, unless the sum or sums therein mentioned shall be sooner paid ; and every such warrant of commitment, made or issued for default of distress as aforesaid, shall be made as well for the non-payment of the costs and expenses so as aforesaid incurred in obtaining such warrant of distress, if the same shall be so ordered as aforesaid, and the costs attending the said distress, and also the costs and charges of taking and conveying the party to prison (the amount of such several costs, expenses, and charges being stated in such warrant of commitment), as for the non-payment of the sum or sums alleged to be due for the said rates.

But nothing herein shall be deemed or construed to authorize justices to grant or issue one warrant of commitment against several persons in default of distress. *Id.* s. 3.

*Tender of rate and costs.*] By stat. 12 & 13 Vict. c. 14, s. 6, in all cases where any proceedings have been or shall hereafter be taken to compel payment, the person to whom such sum and costs shall be paid or tendered shall receive the same, and thereupon no further proceedings for the recovery of the same shall be had or taken. As to the costs of the distress where the amount does not exceed 20*l.*, see *Arch. J. P.*, vol. i. 5th Ed. 403.

*How, where an appeal is pending.*] By stat. 41 Geo. 3, c. 23, s. 2, if any person rated or assessed shall give notice of appeal, then, until the appeal shall have been heard and determined, no proceedings shall be commenced or carried on to recover any greater sum of money from such person, than the sum at which he, or any occupier of the same premises, shall have been rated or assessed in the last effective rate which shall have been collected in such parish, township, vill, or place. And in case the court of quarter sessions shall, upon appeal, order any such rate or assessment to be quashed, such proceedings shall be no further prosecuted: provided always, that no justice of the peace, constable, or other officer of the peace, or other person, shall be deemed a trespasser, or liable to any action, before notice in writing given. *Id.* s. 3.

Or, if upon the hearing of any such appeal, the court of general or quarter sessions shall order the name of any person to be struck out of such rate or assessment, or the sum rated or assessed on any person to be decreased or lowered, every sum ordered to be repaid or returned, shall and may, together with all costs, charges, and expenses, be levied and recovered from the churchwardens and overseers, or any of them, by distress, and all such other ways and means as the money charged, rated, or assessed on any person, by any rate or assessment made for the relief of the poor, can or may be by law levied or recovered. *Id.* s. 8.

*How, in the case of ratepayers removing.]* Every person removing from, and every person coming into or occupying houses, &c. in the parish, shall be liable to pay such rate in proportion to the time that such person occupied the same respectively, in the same manner, and under the like penalty of distress, as if such person so removing had not removed, or such person so coming in or occupying, had been originally rated and assessed in such rate; which said proportion, in case of dispute, shall be ascertained by any two or more of His Majesty's justices of the peace. 17 Geo. 2, c. 38, s. 12.

*In what place the distress may be levied.]* By stat. 17 Geo. 2, c. 38, s. 7, for the more effectual levying money assessed for the relief of the poor, it is enacted, that the goods of any person assessed, and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if such distress cannot be found within the said county or precinct, on oath made thereof before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant), such goods may be levied in such other county or precinct, by virtue of such warrant and certificate; and if any person shall find him or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same.

And by stat. 54 Geo. 3, c. 170, s. 12, it is also enacted, that the goods and chattels of any person neglecting or refusing to pay any sum of money legally assessed on and due from him, in respect of any rate for the relief of the poor, church cess, or highway cess, of any district, parish, township, or hamlet, for the space of seven days after the same shall have been legally demanded of him, shall and may be distrained, not only within such district, parish, township, or hamlet, but also within any other district, parish, township, or hamlet, within the same county, riding, division, or jurisdiction; and if sufficient distress cannot be found within the same county, riding, division, or jurisdiction, then, upon oath thereof made before any one or more justice or justices of the peace of any other county, riding, division, or jurisdiction, in which any of the goods or chattels of such persons shall be found (which oath such justice or justices are hereby required to administer and certify, by indorsing, in his or their respective hand-writing, his or their name or names, on the warrant granted to make such distress), the goods and chattels of the said

person so neglecting or refusing to pay as aforesaid, shall be subject and liable to such distress and sale, in such other county, riding, division, or jurisdiction, where the same shall be found; and may, by virtue of such warrant and certificate, be distrained and sold, in the same manner as if the same had been found within the district, parish, township, or hamlet in or for which such rate or cess had been made or was due.

*Duties of Overseers in other respects.*

<i>Apprenticing poor children, &amp;c.</i> , 813.	<i>Guardians, list of voters for</i> , 819.
<i>Apprentices to the sea service</i> , 814.	<i>Burgess lists</i> , 819.
<i>Lunatics</i> , 815.	<i>Jury lists</i> , 819.
<i>Beer-house</i> , 815.	<i>Registration of parliamentary voters for counties</i> , 821.
<i>Borough or county rate</i> , 815.	<i>Registration of parliamentary voters for boroughs</i> , 822.
<i>Burying dead bodies</i> , 816.	<i>Revising barristers, attending</i> , 824.
<i>Protecting village greens</i> , 817.	<i>Overseers' expenses as to registration, &amp;c.</i> , 824.
<i>Constables' list</i> , 818.	
<i>Prosecuting disorderly houses, gaming-houses, &amp;c.</i> , 818.	
<i>Local board of health</i> , 818.	
<i>Gaol passes</i> , 819.	

*Apprenticing poor children.*] In parishes within unions, the duty of apprenticing poor children is (*ante*, p. 210) imposed upon the guardians; and the rules of the poor law commissioners upon the subject are there stated. But in parishes or townships not in unions, the overseers may, with the consent of two justices of the peace for the county, &c., bind "the children [not being under nine years of age, 56 Geo. 3, c. 139, s. 7], of those who shall not be thought able to keep or maintain them to be apprentices, where they shall see convenient, until such man child shall come to the age of [twenty-one years, 18 Geo. 3, c. 47,] and such woman child to the age of one-and-twenty years or the time of her marriage." 43 Eliz. c. 2, s. 5. The poor law commissioners, by an order dated 29th January, 1845, prescribed certain regulations to be observed upon the apprenticeship of pauper children by overseers, which are in the main similar to the regulations to be observed when the child is apprenticed by a board of guardians.

Before the binding, an order of justices must be obtained for it. For this purpose, the child must be brought before two justices for the county, &c., and the overseers should be



prepared to satisfy the justices as to the fitness of the person to whom it is intended to bind the child, his residence and place of business; and the father or mother of the child, if living, should also attend, in order that the justices may examine him or her if necessary. See 56 Geo. 3, c. 139, s. 1. *Arch. P. L.* 525. The justices may then make an order, authorizing the overseers to bind the child apprentice; and the indenture is accordingly prepared. Before the indenture is executed by any of the parties, it must be allowed by the two justices who made the order. 56 Geo. 3, c. 139, s. 1. And if the child is to be apprenticed into a different parish, notice must be given to the overseers of that parish, of the intended application to the justices to allow the indenture; and if at the time mentioned such overseers or one of them do not attend, and affidavit be made of the service of the notice,—or if they or one of them attend, and show no sufficient cause against the binding, then the justices write their allowance upon the indenture, and sign and seal it. See 56 Geo. 3, c. 139, s. 2. *Arch. P. L.* 533. But if the child is to be bound into a different county and parish, then not only the notice to the overseers of the other parish must be given, as above mentioned, but the indenture must be allowed by two justices of each county. 56 Geo. 3, c. 139, s. 2. The allowance being written, signed, and sealed, the indenture is then executed by a majority of the churchwardens and overseers, as the binding parties, and by the master; in indentures by overseers, the child is not a party.

So, in all cases of indentures of apprenticeship, "by reason of which any expense whatever shall be incurred by the public parochial funds," they must be approved of by two justices of the peace, under their hands and seals, in the manner above mentioned; otherwise they will be void. 56 Geo. 3, c. 139, s. 11.

By the order of 29th January, 1845, the poor law commissioners directed that such justice or justices shall certify at the foot of the indenture and the counterpart thereof when executed.

As to vaccination, see *ante*, p. 213.

As to protecting young servants, see *ante*, p. 214.

*Apprentices to the sea service.*] By stat. 17 & 18 Vict. c. 104, (The Merchant Shipping Act, 1854,) sects. 141, 142, 143, in the case of every boy bound apprentice to the sea service by any guardians or overseers of the poor, or other persons having the authority of guardians of the poor, the indentures shall be executed by the boy and the person to whom he is bound in the presence of and shall be attested by two justices of the peace, who shall ascertain that the boy has

consented to be bound, and has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom the boy is to be bound is a proper person for the purpose. *Id.* s. 142. And all indentures of apprenticeship to the sea service shall be exempt from stamp duty; and all such indentures shall be in duplicate.

*Lunatics.*] As to the duties of overseers in respect of lunatics, see *ante*, p. 202.

*Beer-house.*] By stat. 3 & 4 Vict. c. 61, s. 2, where a person applies to be licensed to retail beer or cider, he shall produce to the proper officer of excise a certificate in writing from an overseer of the township, parish, or place in which he shall reside, certifying that such applicant is the real resident, holder, and occupier of the house for which he requires the licence, and also certifying the true rent or annual value, at which such house, with the premises occupied therewith, is rated in one rating to the poor rates, according to the last sum or rate made and allowed in such township, parish, or place for the relief of the poor. And by sect. 5, every overseer of the poor refusing or falsely certifying shall forfeit 20*l.* This certificate is, however, not a condition precedent to the granting of the licence. *Thompson v. Harvey*, 4 H. & N. 254.

*Borough or county rate.*] In all cases where a borough rate or watch rate may be made and levied in any borough, the council of such borough may order the churchwardens and overseers of every parish or place to pay the amount of such part and portion of such rate for which such parish or place respectively shall be liable, out of the poor rate made and collected or to be made or collected for such parish or place; or, instead, to make and collect a certain pound rate upon and from the occupiers or possessors of all rateable property within such parish or place. 1 Vict. c. 81, s. 1. As to the mode of proceeding, where part only of a parish is within a borough, see stat. 15 & 16 Vict. c. 81, s. 32.

As to the county rate:—By stat. 15 & 16 Vict. c. 81, s. 2, the justices at quarter sessions may from time to time appoint a committee of justices to prepare a basis or standard for a fair and equal county rate, and such committee may direct the overseers of the poor to make returns of the amount of all such property within their respective parishes, &c., and the date of the last valuation; and the overseers, before they present the same to the committee, shall lay the same before a vestry meeting of the parish, &c. *Id.* s. 5. So the said committee may from time to time order the overseers to attend before them, and to produce all parochial and other

rates, valuations, &c., in their custody or power relating to the value or assessment of all property within the several parishes, &c., and to be examined upon oath; *Id.* s. 7; and if they neglect or refuse to appear, or to be sworn or examined, or to produce the documents required of them, they shall forfeit the sum of 20*l.*; *Id.* s. 8; or if they neglect to make the returns above mentioned, the full expense of the committee in ascertaining the value of the rateable property in the parish, &c., shall be charged upon such parish, &c., to be levied in the same manner as a county rate. *Id.* s. 10. So, where the committee order a new valuation of a parish, &c., they may order the overseers to pay the expenses of it, to be levied, &c., in the same manner as the county rate. *Id.* s. 11. The committee may make such allowance and compensation to overseers, as to them shall seem reasonable, out of the county stock. *Id.* s. 12.

As soon as the committee shall have prepared the basis or standard of a county rate, in which the property in any parish or place is estimated at a greater or less amount than in the last preceding basis or standard, they shall send copies thereof to the overseers of each parish, &c., with a notice of the time within which objections may be made to it; and the overseers within twenty-one days after the receipt thereof, shall call a vestry meeting, and lay such copy before the meeting. *Id.* ss. 13, 14. Against this basis or standard any overseer of the poor or other person having the collection or levy of the county rate, or any inhabitant of a parish, &c., may appeal to the quarter sessions, giving due notice of appeal. *Id.* s. 17.

According to this basis or standard, the justices at quarter sessions may afterwards make a county rate, assessing each parish, &c., according to a certain pound rate, (*Id.* s. 21,) against which the overseers or any inhabitant of such parish may appeal. *Id.* ss. 22-25. A precept shall be sent to the guardians of each union in the county, [or to the overseers of parishes not in unions, sect. 30,] stating the sums at which each parish in the union is rated, and requiring the same to be paid to the treasurer of the county; *Id.* s. 26; and in case the guardians do not pay on behalf of any parish, a warrant may be sent to the overseers of such parish to levy the amount, and pay it to the county treasurer; and if they fail to do so, the same may be levied by distress and sale of the goods of such overseers. *Id.* ss. 27, 28.

*Burying dead bodies.]* If any person shall find a dead body or bodies cast on shore from the sea by wreck or otherwise, he shall within six hours give notice thereof to one of the churchwardens or overseers of the parish where the body shall be found, or (if it be found in an extra-parochial place)

to the constable or headborough, or cause such notice to be left at his last place of abode: if he do this, he shall have a reward of 5s. (48 Geo. 3, c. 75, s. 3,) to be paid to him by such churchwarden, &c.; *Id.* s. 5.; or if he do not, he shall forfeit 5*l.* *Id.* s. 4.

Upon notice being so given to the churchwarden, overseer, or constable, &c., he shall cause the body to be forthwith removed to some convenient place, and with all convenient speed cause it to be decently interred in the churchyard or burial ground of such parish or place. *Id.* s. 1. And if he refuse or neglect to have such body removed to some convenient place prior to interment, for twelve hours after notice so given to or left for him, or shall neglect or refuse to perform the other duties required of him by this Act, he shall forfeit the sum of 5*l.* *Id.* s. 7. The statute gives an appeal. *Id.* s. 10.

All necessary expenses incurred in the execution of this Act, shall be paid in the first instance by the churchwardens or overseers, or constable or headborough, of the parish or place; *Id.* s. 5; who shall be afterwards reimbursed by an order of any one justice of the peace upon the treasurer of the county, &c., (*Id.* s. 6,) to be paid out of the county rate. *Id.* s. 14.

In other cases, also, the guardians, or, where there are no guardians, the overseers, may cause the dead body of any poor person, which may be within their union or parish, to be buried, and charge the expense thereof to the parish to which such poor person was chargeable. 7 & 8 Vict. c. 101, s. 31. And they are to give notice to the registrar of births of any new born child found exposed. 6 & 7 Will. 4, c. 86, s. 19.

*Protecting village greens.*] "And whereas it is expedient to provide summary means of preventing nuisances in town greens and village greens, and on land allotted and awarded upon any inclosure under the said Acts as a place for exercise and recreation:" If any person wilfully cause any injury or damage to any fence of any such town or village green or land, or wilfully and without lawful authority lead or drive any cattle or animal thereon, or wilfully lay any manure, soil, ashes, or rubbish, or other matter or thing thereon, or do any other act whatsoever to the injury of such town or village green or land, or to the interruption of the use or enjoyment thereof as a place for exercise and recreation, such person shall for every such offence, upon a summary conviction thereof before two justices, upon the information of any churchwarden or overseer of the parish in which such town or village green or land is situate, or of the person in whom the soil of such town or village green or land may be vested,

forfeit and pay, in any of the cases aforesaid, and for each and every such offence, over and above the damages occasioned thereby, any sum not exceeding 40s.; and it shall be lawful for any such churchwarden or overseer or other person as aforesaid to sell and dispose of any such manure, soil, ashes, and rubbish, or other matter or thing as aforesaid; and the proceeds arising from the sale thereof, and every such penalty as aforesaid, shall, as regards any such town or village green not awarded under the said Acts or any of them to be used as a place for exercise and recreation, be applied in aid of the rates for the repair of the public highways in the parish, and shall, as regards the land so awarded, be applied by the persons or person in whom the soil thereof may be vested in the due maintenance of such land as a place for exercise and recreation; and if any manure, soil, ashes, or rubbish be not of sufficient value to defray the expense of removing the same, the person who laid or deposited such manure, soil, ashes, or rubbish shall repay to such churchwarden or overseer or other person as aforesaid the money necessarily expended in the removal thereof; and every such penalty as aforesaid shall be recovered in manner provided by the Act of the session holden in 11 & 12 Vict. c. 43; and the amount of damage occasioned by any such offence as aforesaid shall, in case of dispute, be determined by the justices by whom the offender is convicted; and the payment of the amount of such damage, and the repayments of the money necessarily expended in the removal of any manure, soil, ashes, or rubbish, shall be enforced in like manner as any such penalty. 20 & 21 Vict. c. 31, s. 12.

*Constables' list.*] Overseers we have seen (*ante*, p. 123), upon the receipt of the justices' precept must call a vestry meeting, to make out a list of all persons in their parish or township qualified and liable to serve as constables; and shall affix a copy of such list upon the principal door of each church and chapel in their district, and return the original to the justices; and they shall afterwards attend at the special sessions holden for the appointment of constables, to verify the list, and to answer such questions as may be put to them.

*Disorderly houses, gaming houses, &c.*] The duty of overseers as to prosecuting any person keeping a bawdy-house, gaming-house, or any other disorderly house in such parish is stated *ante*, p. 168.

*Local board of health.*] In parishes whose population exceeds 2,000 where the Public Health Act is not adopted, the overseers and churchwardens are, if required, to call a public meeting on the subject of removing any public nuisance, and

if ordered to do the work and pay the same out of the poor rate. 11 & 12 Vict. c. 63, s. 50. If there be no local board of health in the parish, and no guardians, the overseers are to act as such in carrying out the Nuisances Removal and Diseases Prevention Acts. 23 & 24 Vict. c. 77, s. 11. See *ante* "*Local Authority.*"

*Gaol passes.*] The overseer of the poor of such place through which a discharged prisoner shall pass, shall pay him the sum specified in the justices' pass for the number of miles to the next town or place, and shall indorse the same on the pass, and take the party's receipt; 5 Geo. 4, c. 85, s. 24; and he shall be reimbursed by the treasurer of the county. *Id.* s. 25. And at the last place of receiving this allowance, the party shall deliver up the pass to the overseer, who shall thereupon transmit the same by post, under cover, indorsed "Pass of a discharged prisoner," to the keeper of the prison from which the party was discharged. *Id.* s. 26.

*Guardians, list of voters for.*] The churchwardens and overseers of parishes in unions, shall enter in some book to be from time to time provided for that purpose, the names and addresses of the owners and proxies who shall send statements of their claims to vote, and the assessment of the poor rate on the property in respect whereof they respectively claim to vote. *Ord. P. L. C. 22nd April, 1842, Art. 5, s. 4.* This book may be kept according to the form annexed to the order.

*Burgess lists.*] If the parish is wholly or partly within a borough, city, or town corporate, the overseers must on 5th September, under a penalty of 50*l.*, make out the burgess list according to 5 & 6 Will. 4, c. 76, Sched. D. of all persons entitled to be on the burgess roll, and this list must be signed and delivered to the town clerk, and a copy kept for inspection, without fee, at all reasonable hours between 5th & 15th September. 4 & 5 Will. 4, c. 76, ss. 15, 48. The reasonable expenses are payable out of the poor rate. *Id.* s. 24.

*Jury lists.*] By stat. 6 Geo. 4, c. 50, s. 1, every man between the ages of twenty-one and sixty, residing in any county in England, who shall have in his own name or in trust for him, within the same county, 10*l.* by the year above reprises in lands or tenements, whether of freehold, copyhold, or customary tenure, or of ancient demesne, or in rents issuing out of any such lands or tenements, or in such lands, tenements, and rents, taken together, in fee-simple, fee-tail, or for the life of himself or some other person; or who shall have within

the same county 20*l.* above reprises in lands or tenements, held by lease for an absolute term of twenty-one years or more, or for any term of years determinable on any life or lives; or who being a householder shall be rated or assessed to the poor rate, in Middlesex, on a value not less than 30*l.*, or in any other county on a value not less than 20*l.*; or who shall occupy a house containing not less than fifteen windows, —shall be qualified and liable to serve on grand juries in courts of sessions of the peace, and on petty juries for the trial of all issues joined in such courts of sessions of the peace, and triable in the county, riding, or division in which every man so qualified respectively shall reside. 6 Geo. 4, c. 50, s. 1. In Wales, the qualification is three-fifths of the qualifications above mentioned. *Id.*

Peers, however, are exempt from serving on juries; so are the judges of the courts of record at Westminster; clergymen in holy orders; priests of the Roman catholic faith, who have taken and subscribed the oaths and declarations required by law; persons who teach or preach in a congregation of protestant dissenters, whose place of meeting is registered, and who follow no secular occupation, except that of schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law; serjeants and barristers-at-law actually practising; members of the society of doctors-at-law, and advocates of the civil law actually practising; attorneys, solicitors, and proctors actually practising, and having duly taken out their annual certificates; officers of the courts of law and equity, and of the ecclesiastical and admiralty courts; coroners, gaolers, and keepers of houses of correction; members and licentiates of the royal college of physicians in London, actually practising; surgeons, being members of the royal college of surgeons in London, Dublin, or Edinburgh, and actually practising; apothecaries certificated by the apothecaries' company, and actually practising; pharmaceutical chemists; officers of the navy or army on full pay; pilots licensed by the Trinity House of Deptford, Hull, or Newcastle-upon-Tyne, and masters in the buoy or light service of these corporations; and pilots licensed by the lord warden of the cinque ports, or by statute or charter in any other port; household servants of Her Majesty; officers of customs or excise; sheriffs' officers, high constables, and parish clerks. 6 Geo. 4, c. 50, s. 2; 25 & 26 Vict. c. 107.

In the first week of July of every year, the clerk of the peace in every county shall issue his precept to the churchwardens and overseers of the poor of the several parishes, and to the overseers of the poor of the several townships, within their respective constablewicks, requiring them to re-

turn a list of all men residing within their parishes, &c., qualified and liable to serve on juries. 6 Geo. 4, c. 50, s. 4; 25 & 26 Vict. c. 107, s. 4. The churchwardens and overseers must make out the lists, (6 Geo. 4, c. 50, s. 8,) and fix a copy on the church door on the three first Sundays in September. *Id.* s. 9. If an extra-parochial place is annexed the list shall include that place also. *Id.* s. 7. The expenses of these lists are payable out of the poor rate. 7 & 8 Vict. c. 101, s. 60.

*The forms of the precepts and lists are given in the schedule to the Act.* 25 & 26 Vict. c. 107.

And if any churchwarden or overseer of any parish, or any overseer of any township, shall refuse or neglect, or wilfully omit any of the statutory duties in reference to these lists, he shall incur a penalty not exceeding 10*l.*, nor less than 40*s.* 6 Geo. 4, c. 50, s. 45.

If there is a vestry clerk it is his duty to make out the jury lists. 13 & 14 Vict. c. 57, s. 7.

*Registration of parliamentary voters for counties.*] Overseers of the poor have certain duties assigned to them in preparing the annual registration of the several persons in their parish or township, entitled to vote in the election of members of parliament. The clerk of the peace of the county, on or before the 10th of June in each year, sends to the overseers of each parish and township within the county, a precept, detailing these duties, and instructing them as to the manner in which they are to be performed. At the same time he sends them a sufficient number of printed forms of—Notices to claimants,—Lists of claimants,—Lists of persons objected to,—Copies of such part of the register of voters then in force for such county, as shall relate to such parish or township,—and a Table of rates of payment to be demanded and paid for any list or copy of a list, where payment is required or authorized by the statute.

On or before the 20th June in every year, the overseers of the poor of every parish shall publish a notice to claimants, to give or send to the said overseers, on or before the twentieth day of July then next ensuing, a notice in writing by them signed, of their claim to vote. 6 Viet. c. 18, s. 4; and see ss. 27–33.

On or before the last day of July in every year, the overseers shall make out a list of claimants, according to the form sent them by the clerk of the peace, which shall contain a list of all persons, who, on or before the twentieth July then next preceding, shall have claimed as aforesaid; and the overseers shall cause a sufficient number of copies of such list of claimants, and of the said copy of the register, with marginal additions, to be written or printed, and shall, on or



before the first day of August, sign and publish the same; and shall likewise keep a copy, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, during the first fourteen days after the same shall have been published, and shall deliver written or printed copies thereof, signed by them, to all persons applying for the same, on payment of a price for each copy, after the rate contained in the table hereinbefore mentioned. *Id.* s. 5.

And in every year, every person who shall be upon the register for the time being for any county may object to any other person upon any list of voters for such county, as not having been entitled, on the last day of July then next preceding, to have his name inserted in any list of voters for such county: and every person so objecting (save and except overseers objecting in the manner hereinbefore mentioned), shall, on or before the twenty-fifth day of August in such year, give or cause to be given to the overseers of the poor of the parish or township to which the list of voters containing the name of the person objected to may relate, a notice, according to the form numbered (4) in the said schedule (A.), or to the like effect. *Id.* s. 7. The overseers shall then make out a list of the persons so objected to, and shall publish such list on or before the first day of September; and shall also keep a copy of such list, to be perused by any person, without payment of any fee, during the first fourteen days of the said month of September, and shall deliver a copy of such list to any person requiring the same, on payment of a price for each copy after the rate contained in the table hereinbefore mentioned. *Id.* s. 8. And on or before the twenty-ninth August in every year, the overseers of every parish or township shall deliver to the clerk of the peace of the county wherein the said parish or township is situate, the said copy of the register, and the said list of claimants, with the marginal additions respectively as aforesaid, and also a copy of the list of persons objected to respectively signed as aforesaid, and relating to their parish or township. *Id.* s. 9.

If there is a vestry clerk it is his duty to prepare the lists for the county as well as for boroughs. 13 & 14 Vict. c. 57, s. 7.

*Registration of parliamentary voters for boroughs.]* The town clerk of every city or borough, on or before the 10th of June, in every year, sends to the overseers of the poor of every parish or township situate wholly or in part within such city or borough, or within any place sharing in the election for such city or borough, a precept, detailing their duties, and

instructing them as to the manner in which they are to be performed. At the same time, he sends a sufficient number of printed forms of—Notices to voters to pay their rates and taxes before the 20th July,—Lists of persons entitled to vote in respect of property,—Lists of persons entitled to vote in other respects, and not as freemen,—Lists of claimants,—Lists of persons objected to,—and a Table of the rates of payment to be demanded and paid for any list or copy of a list, where payment is required or authorized by the statute.

On or before the 20th June in every year, the overseers of every such parish or township shall publish the notice to the voters to pay their rates and taxes due in respect of their premises during the twelve calendar months next before the [fifth day of January in the same year, 11 & 12 Vict. c. 90, s. 1.] 6 Vict. c. 18, s. 11. And for their assistance in making out the list of voters, every assessor or collector of taxes shall, within two days after the twentieth of July in every year, make out and deliver to the said overseers a list containing the name and place of abode of every person who shall not have paid the assessed taxes, to be kept for public inspection without fee. 6 Vict. c. 18, s. 12.

On or before the last day of July in every year, the overseers of every such parish or township, shall make out, according to the form sent them by the town clerk, an alphabetical list of all persons who may be entitled to vote, and shall sign such lists, and shall permit free inspection thereof for fourteen days after 1st August. *Id.* s. 13.

On or before the 25th August, every person wishing to have his name on the list of voters, must give notice of his claim to the overseer. *Id.* s. 15.

Any person whose name shall be on the list of voters for the time being, or any person who shall have claimed to have his name inserted in any such list, upon request made to any overseer, may inspect the poor-rate book and make extracts therefrom. *Id.* s. 16.

Every person whose name shall have been inserted in any list of voters for any city or borough may object to any other person as not entitled, on the last day of July next preceding, and shall on or before the twenty-fifth day of August in that year, give a notice to the overseers. *Id.* s. 17. And the said overseers shall include the names of all persons so objected to, in a list, and shall publish the said list on or before the first day of September in the said year, and shall keep copies for free inspection. *Id.* s. 18.

And the said overseers shall, on or before the twenty-ninth day of August in every year, deliver to the said town clerk a copy of the said list of voters made out by them as aforesaid, and a copy of the said list of persons who shall have claimed

as aforesaid, and a copy of the list of persons objected to as aforesaid. *Id.* s. 19.

*Attending the revising barristers.*] In counties the overseers of every parish and township shall attend the court to be holden for revising the lists relating to their parish or township, and shall deliver to the barrister or barristers holding such court the original notices of claim and notices of objection given to them as aforesaid; and shall (if required) answer upon oath all questions put to them. 6 Vict. c. 18, s. 34.

So, in boroughs, the several overseers shall attend the first court to be holden before every such barrister, and shall deliver to the said barrister the several lists, and also the original notices of claim and of objection, and shall also produce all rates made for the relief of the poor of their respective parishes or townships, between the {fifth day of January, 11 & 12 Vict. c. 90, s. 1} in the year then last past and the last day of July in the then present year. *Id.* s. 35.

*Overseers' expenses as to registration, &c.*] An account of all expenses incurred by the overseers of every parish or township in carrying into effect the provisions of this Act, shall be laid before the revising barrister at the court at which the list of voters for such parish or township shall be revised; and the said barrister shall sign and give to the said overseers a certificate of the sum which he shall allow to be due to them in respect of the said expenses; and it shall be lawful for the said overseers to receive the sum so certified to be due to them from and out of the first monies thereafter to be collected for the relief of the poor in the same parish or township. 6 Vict. c. 18, s. 57.

### 3. THEIR BOOKS AND ACCOUNTS.

*Books, offices, &c., 324.*

*Overseers to account, 325.*

*Accounts to be examined and allowed, 325.*

*What disbursements to be allowed, 325.*

*Their books, offices, &c.*] The overseers are required by an order of the poor law commissioners to keep the following books, except so far as any collector under them may do so. 1. A rate book in the form prescribed by the order. 2. A book of receipts and payments. 3. A balance sheet of the

receipts and payments. And where there are more than thirty ratepayers on the rate book, and no collector, the overseers are bound to keep, and in other cases they may, if they think fit, keep the following books. 1. A rate receipt check book of a particular form. 2. A general receipt check book. 3. When required by the auditor or poor law board, a terrier of the lands and tenements, and an inventory of stock, monies, goods, and effects belonging to the parish.

If the population of the parish exceed 4,000 persons, a parish office may be provided as stated, *ante*, p. 11.

*Overseers to account.*] By stat. 17 Geo. 2, c. 38, s. 1, the churchwardens and overseers, every year, within fourteen days after other overseers shall be appointed to succeed them, shall deliver to such succeeding overseers a just, true, and perfect account in writing, fairly entered in a book signed by them, of all sums of money by them received, or rated and not received, and of all goods, stock and materials in their hands or the hands of the poor to be wrought, and of all monies paid by them, and of all other things concerning their office; and shall pay and deliver all money and goods in their hands to their successors; which account shall be verified on oath before one or more justices of the peace, and be afterwards open to inspection, in the hands of such succeeding overseers. And if they or any of them fail thus to render their accounts, or pay over the balance, &c., two or more justices may commit him or them to the common gaol, until they shall render such account, or shall pay or yield up such monies, goods, chattels, and other things in their hands as aforesaid. *Id.* s. 2.

But if the parish be in a union, the jurisdiction of the justices to audit the accounts of overseers of all parishes or townships within such district, is taken away, and such accounts can only be audited by such auditor. 7 & 8 Vict. c. 101, s. 37. See tit. "*District Auditor*," *post*.

*Accounts to be examined and allowed.*] The accounts so rendered yearly, shall be submitted by the churchwardens and overseers to two or more justices of the peace of the county, who will tax the accounts. 50 Geo. 3, c. 49, s. 1. If the parish is in a union the auditor does this duty. See "*Paid Officer—Auditor*."

*What disbursements to be allowed.*] As to the payments which an overseer may legally make, and which, if made, must of course be allowed him in his accounts, it is material to consider the subject at some length.

1. All sums necessarily expended by them in the main:en-

ance of the poor, in pursuance of the stat. 43 Eliz. c. 2, or other statutes upon the subject, shall be allowed to them. See 43 Eliz. c. 2, s. 1; 22 Geo. 3, c. 83, s. 8; 41 Geo. 3, c. 9, s. 2. But this is to be understood only of parishes not in union. If in a union, the overseers can only give relief in cases of "sudden and urgent necessity," and then only in kind and not in money. See 4 & 5 Will. 4, c. 76, s. 54.

2. All payments which they are obliged to make by any statute, such, for instance, as their parish's proportion of the county rate; (see 12 Geo. 2, c. 29, s. 2); the sums paid by them for outfit, &c. of parish boys, apprenticed to the sea service; 7 & 8 Vict. c. 112, s. 35; the burying of the bodies of poor persons who die in their parish; 7 & 8 Vict. c. 101, s. 31, *ante*, p. 316; the expense of making out, preparing, printing and collecting the jury lists; 7 & 8 Vict. c. 101, s. 60; the expense of perambulating the parish once in every three years, and in setting up and keeping in repair the boundary stones of the parish; *Id.*; the expenses of the burial board if one is appointed; 15 & 16 Vict. c. 85, s. 19; 18 & 19 Vict. c. 128, ss. 18, 18; 20 & 21 Vict. c. 81, s. 23; or the like,—shall be allowed to them.

3. As to the debts which have been incurred by former overseers, it is enacted by stat. 11 & 12 Vict. c. 91, s. 1, that if the overseers of the poor in any parish shall lawfully, by virtue of their office, contract any debt on account of the parish within three months prior to the termination of their year of office, and the same shall not have been discharged by them before their year of office shall have determined, such debt shall be payable by and recoverable from their immediate successors in office, and chargeable upon the poor rate of the said parish, in like manner as the same would have been payable and chargeable by such first-mentioned overseers during their year of office;—and if any such debt shall have been contracted during their year of office, but more than three months prior to its termination, the same shall be payable by and recoverable from their immediate successors in office, if the ratepayers of the parish in vestry assembled, and the commissioners for administering the laws for relief of the poor in England, shall consent, but not otherwise. See *R. v. Reed et al.*, 18 Law J. 164, *m.*

4. All sums paid by them to the constable, in pursuance of stat. 18 Geo. 3, c. 19, ss. 3, 4. And these shall not be disallowed. 11 & 12 Vict. c. 91, s. 6.

5. The expenses of litigating settlements, per Ashurst, J., (*R. v. Essex*, 4 T. R. 595,) and such other law expenses as have been properly incurred, (*R. v. Micklefield*, 1 Bott, 91,) shall be allowed to them; also fees paid to the justices' clerk in respect of appeals against poor rates; 13 & 14 Vict.

c. 101, s. 7; but not the expenses of defending an appeal against overseers' accounts; *R. v. Johnson*, 5 Ad. & El. 340; or of improperly defending an appeal against a rate. *R. v. Fouch et al.*, 2 Q. B. Rep. 308; 11 Law J. 1, m.; *R. v. Great Western Railway Co.*, 18 Law J. 145, m.; or of improperly prosecuting an offender. *R. v. Bird et al.*, 2 B. & Ald. 522.

By stat. 11 & 12 Vict. c. 91, s. 2, it is provided that where any proceedings have been commenced, or shall be hereafter carried on, for or on behalf of any parish, in a court of law, regarding any matter affecting the poor rates of such parish, it shall not be necessary that the bill of costs of the solicitor or attorney engaged therein shall be paid before the termination of the proceedings, but in any such case the amount of the bill, when duly taxed, if otherwise chargeable against the parish, shall be payable out of the poor rates within the space of one year next following the termination of the proceedings, but not afterwards, unless the commissioners aforesaid shall by their order authorize the payment of the costs and expenses attending any such proceedings by annual instalments not exceeding five, to commence from such termination.

6. The salary of the assistant-overseer (if any have been appointed), under stat. 59 Geo. 3, c. 12, s. 7, shall be allowed to them. But an overseer cannot charge for a salary to himself. *R. v. Glyde*, 2 M. & S. 323, n. They cannot be allowed a salary, neither can they employ others at a salary at the public expense; and even if the vestry directed it, they had no authority by law to do so. *R. v. Gwyer & Manley*, 4 Nev. & M. 158.

7. Where an overseer has advanced his own money for the maintenance, &c., of the poor, he may repay himself out of any money he afterwards receives on account of the poor, during his year of office; (per Holt, C. J., *Tawney's case*, 2 Salk. 531;) or the succeeding overseers may levy such sums as remained due to him from the ratepayers at the expiration of his office, and reimburse him out of the amount; 17 Geo. 2, c. 38, s. 11; and may, out of any money they may collect in pursuance of any rate by them made for the relief of the poor, reimburse him for any sum he may have advanced during a time when there was no rate, or whilst an appeal was depending which affected the whole rate, or upon the hearing of which the whole rate might have been quashed. 41 Geo. 3, c. 23, s. 9. See *Tawney's case*, 2 Salk. 531. *R. v. Rotherhithe*, 8 Mod. 338. Overseers should not include several years in their accounts, but should confine them entirely to that year in which they are directed by law to be passed. *R. v. Goodcheap*, 6 T. R. 159.

Lastly, by the Poor Law Amendment Act, (4 & 5 Will. 4,

c. 76, c. 89,) "all payments, charges and allowances, made by any overseer or guardian, and charged upon the rates for the relief of the poor, contrary to the provisions of this Act, or at variance with any rule, order or regulation of the said commissioners made under the authority of this Act, shall be and the same are hereby declared to be illegal, any law, custom or usage to the contrary notwithstanding; and every justice of the peace is hereby required to disallow, as illegal and unfounded, all payments, charges or allowances contrary to the provisions of this Act, or to any such rule, order, or regulation of the said commissioners, which shall be contained in any account of any overseer of the poor or guardians, which shall be presented for the purpose of being passed or allowed."

*Auditing of their accounts.*] Upon this subject, see tit. "District Auditor," *post*.

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#### 4. FRAUDS AND OFFENCES, ETC., BY OVERSEERS.

<i>Fraud with respect to settlements,</i> 328.	<i>Embezzling money, &amp;c.,</i> 330.
<i>Neglect of duty, or disobeying the orders of justices, &amp;c.,</i> 328.	<i>Being concerned in furnishing goods, &amp;c., for the poor,</i> 330.

*Fraud with respect to settlements.*] By stat. 9 & 10 Vict. c. 66, s. 6, however, if any officer of any parish or union do contrary to law, with intent to cause any poor person to become chargeable to any parish to which such person was not then chargeable,—convey any poor person out of the parish for which such officer acts, or cause or procure any poor person to be so conveyed,—or give directly or indirectly any money, relief, or assistance, or cause or procure to be afforded any facility for such conveyance,—or make any offer or promise, or use any threat, to induce any poor person to depart from such parish,—and if, in consequence of such conveyance or departure, any poor person become chargeable to any parish to which he was not then chargeable,—such officer, on conviction thereof before any two justices, shall forfeit and pay for every such offence any sum not exceeding 5*l.* nor less than 40*s.* 14 & 15 Vict. c. 105, s. 11.

*Neglect of duty, or disobeying the orders of justices, &c.*] Upon complaint made on oath to any two or more justices of the peace, at any special or petty sessions, of any neglect of duty or disobedience of any lawful warrant or order of a justice of

the peace by any constable, overseer of the poor, or other peace or parish officer (such overseer, &c., having been duly summoned to appear and answer such charge), they may impose, upon conviction, any reasonable fine not exceeding 40s. upon such constable, overseer, &c., as a punishment for such disobedience or neglect of duty, to be applied and disposed of for the relief of the poor of the parish, &c., where the offender shall reside; and by warrant under their hands and seals, they may direct the same to be levied by distress, or for default of distress, they may commit the offender for a time not exceeding ten days. 33 Geo. 3, c. 55, s. 1. If the party think himself aggrieved by this conviction, he may appeal to the next general or quarter sessions, giving at least ten days' notice of appeal. *Id.*

And by the 4 & 5 Will. 4, c. 76, s. 95, in case any overseer, assistant overseer, master of a workhouse, or other officer of any parish or union, shall wilfully disobey the legal and reasonable orders of the justices and guardians, in carrying the rules, orders, and regulations of the commissioners or assistant commissioners, or the provisions of this Act, into execution,—every such offender shall, on conviction before any two justices, forfeit and pay a sum not exceeding 5*l.* But he shall not be subject to prosecution or penalty for not carrying into execution any illegal order of such justices or guardians. *Id.* s. 96.

If the overseers of any parish wilfully neglect to make or collect sufficient rates for the relief of the poor, or to pay such monies to the guardians of any parish or union as such guardians may require, and if by reason of such neglect any relief directed by the board of guardians to be given to any poor person be delayed or withheld during a period of seven days, every such overseer shall upon conviction thereof forfeit and pay for every such offence any sum not exceeding 20*l.* 7 & 8 Vict. c. 101, s. 63. If at any time the overseers be in arrear with the payment of the contribution orders, the guardians may, through their chairman or acting chairman, apply to any two justices acting within the district, for a summons to show cause, at a special sessions to be summoned for the purpose, why such contribution has not been paid, and after hearing the justices may cause the amount thereof, together with the costs, to be levied by distress and sale of the goods of the overseer. 2 & 3 Vict. c. 84, s. 1.

The stat. 17 Geo. 2, c. 38, s. 14, also imposes a penalty, not exceeding 5*l.* nor less than 20*s.*, for any neglect or refusal to obey and perform the orders and directions of that Act. And generally, for any gross neglect of duty, or for a refusal or neglect to obey the lawful orders of a magistrate, overseers may be indicted.



*Embezzling money, &c.*] If any overseer, assistant overseer, master of a workhouse or other paid officer, or any other person employed by or under the authority of the guardians, shall purloin, embezzle, or wilfully waste or misapply any of the monies, goods, or chattels belonging to any parish or union, every such offender shall (besides and in addition to such pains and penalties as he may be liable to independently of this Act), upon conviction before any two justices, forfeit and pay a sum not exceeding 20*l.*, and also treble the amount or value of such money, goods, or chattels so purloined, embezzled, wasted, or misapplied; and he shall for ever thereafter be incapable of serving any office under this or any other Act relating to the relief of the poor. 4 & 5 Will. 4, c. 76, s. 97. An information, as set out in a conviction on this statute for a misapplication of parish property, must state that the party "wilfully" misapplied, &c., otherwise the justice will not appear to have jurisdiction. *Carpenter v. Mason et al.*, 10 Law J. 1, *m.*

*Being concerned in furnishing goods, &c., for the poor.*] No churchwarden or overseer of the poor, or other person having the collection of the poor rate, or the providing for, ordering, management, control, or direction of the poor of any parish, township, hamlet, or place, shall, either in his own name or in the name of any other person, provide, furnish, or supply for his own profit any goods, materials, or provisions for the use of any workhouse, or otherwise for the support and maintenance of the poor, in any parish, township, hamlet, or place for which he shall be appointed as such, during the time he shall retain such appointment,—nor shall be concerned, directly or indirectly, in furnishing or supplying the same, or in any contract relating thereunto,—under pain of forfeiting the sum of 100*l.*, with full costs of suit, to any person who will sue for the same by action of debt, in any of the courts of record at Westminster. 55 Geo. 3, c. 137, s. 6. See *Henderson et al. v. Sherborne*, 2 Mees. & W. 236.

But if no other person can be found within a convenient distance of the workhouse competent and willing to supply it with the articles required, two or more justices by certificate under their hands and seals, may permit any such overseer, &c., to contract for the supply of any articles or things required for such workhouse, or otherwise for the use of the poor of such parish, &c.,—such certificate to be entered and a copy left with the clerk of the peace of the county, &c., or the town clerk of the city or borough, where such person resides;—in which case he shall not incur the penalty aforesaid. *Id.*

This penalty and provision are extended and made applicable to every commissioner, assistant commissioner, guardian, treasurer, master of a workhouse, or other officer, to be ap-

pointed under the provisions of the Poor Law Amendment Act. 4 & 5 Will. 4, c. 76, s. 51. It extends also to guardians appointed under stat. 22 Geo. 3, c. 83. *West v. Andrews*, 1 B. & C. 77.

The above stat. 55 Geo. 3, c. 137, has been holden to extend to the case of a guardian of the poor selling sheep to the master of a workhouse (who was appointed by the guardians), although such master had contracted to maintain the poor at a certain sum per head. *West v. Andrews*, 5 B. & A. 328. And it is no defence to the action, to say that the defendant furnished the goods at a fair market price; for still it is done for his profit. *Pope v. Backhouse*, 8 Taunt. 239. If however he supply the goods, but not for profit, his case is not within the statute. *Skinner v. Buckee*, 3 B. & C. 6. So, if he supply materials for the repair of a workhouse, it is not within the statute. *Barber v. Waite*, 1 Ad. & El. 514. So, supplying goods to an individual pauper, with his consent, as a portion of the relief ordered to be given him, was holden not to be within the statute; for the statute extended only to cases where the goods were supplied for the use of the poor generally. *Proctor v. Mainwaring*, 3 B. & A. 145. But now, by stat. 4 & 5 Will. 4, c. 76, s. 77, it shall not be lawful for any person, filling an office concerned in the administration of the laws for the relief of the poor, to furnish or supply, for his own profit, or on his own account, any goods, materials, or provisions ordered to be given in parochial relief,—or to furnish or supply any goods, materials, or provisions for or in respect of the money ordered to be given in parochial relief, to any person in such parish or union;—and every person so offending shall, on conviction before any two justices of the peace, be subject to a penalty of 5*l.*, one-half to be paid to the informer, the other half in aid of the poor rates of such parish or union. 12 & 13 Vict. c. 103, s. 6.

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5. ACTIONS, &c., BY OR AGAINST THEM.

*Actions, &c., by them*, 331.

*Recovery of parish houses, &c.*,  
332.

*Prosecutions under stat. 14*  
*& 15 Vict. c. 11, p. 333.*

*Actions against them*, 333.

*Actions, &c., by them.*] The property in all goods, furniture, provisions, clothes, linen, and wearing apparel, tools, utensils, materials, and things whatsoever, had, bought, procured, or provided for the use of any parish, township, hamlet, or place,

are vested in the overseers of the poor of such parish, &c., for the time being, and their successors in office, who are empowered to bring any action, or prefer any bill of indictment against any person who shall steal, take, or carry away, or buy or receive any such goods, &c.; and in every such action and indictment, the said goods, &c., shall be laid or described to be the property of the overseers of the poor for the time being of such parish, &c., without stating or specifying the names of any of them: this, however, is not to be deemed to repeal the provisions in local Acts, whereby such property may be vested in other persons. 55 Geo. 3, c. 137, s. 1.

So, the churchwardens and overseers for the time being may sue on a bond given under stat. 59 Geo. 3, c. 12, s. 7, for the due performance of the duties of assistant overseer. *Skelton et al. v. Rushby et al.*, 19 Law J. 29, m.

In all other cases, overseers of the poor must sue as ordinary individuals.

*Recovery of parish houses, &c.*] If any person who shall have been permitted to occupy any parish or town house, or any other tenement or dwelling belonging to or provided by, or at the charge of any parish, for the habitation of the poor thereof,—or who shall have unlawfully intruded himself or herself into any such house, tenement, or dwelling, or into any house, tenement, or hereditament belonging to such parish,—shall refuse or neglect to quit the same, and deliver up the possession thereof to the churchwardens and overseers of the poor of any such parish, within one month after notice and demand in writing for that purpose, signed by such churchwardens and overseers, or the major part of them, shall be delivered to the person in possession, or in his or her absence affixed on some notorious part of the premises,—any two justices of the peace, upon complaint to them made by one or more of the churchwardens and overseers of the poor of the parish in which such house, tenement, or dwelling shall be situate, may issue their summons to the person against whom such complaint shall be made, to appear before such justice at the time and place to be appointed by them, and to cause such summons to be delivered to the party against whom such complaint shall be made, or in his or her absence to be affixed on the premises, seven days at the least before the time appointed for hearing such complaint; and such justices shall, upon the appearance of the defendant, or upon proof on oath that such summons hath been delivered or affixed as hereby directed, proceed to hear and determine the matter of such complaint; and if they shall find and adjudge the same to be true, then by warrant under their hands and seals, they shall cause possession of the premises in question to be delivered to

the said churchwardens and overseers, or to some of them. 59 Geo. 3, c. 12, s. 24. See *Wildbore v. Rainford et al.*, 8 B. & C. 4; and see *Doe v. Hiley*, 10 id. 885. *R. v. JJ. of Middlesex*, 7 Dowl. 767. *Smith v. Adkins et al.*, 8 Mees. & W. 362.

And if any person to whom any land, appropriated, purchased, or taken under the authority of this Act for the employment of the poor of any parish, or to whom any other lands belonging to such parish, or to the churchwardens and overseers thereof, or either of them, shall have been let for his or her own occupation, shall refuse to quit and deliver up the possession thereof to the churchwardens and overseers of the poor of such parish, at the expiration of the term for which the same shall have been demised or let to him or her;—or if any person shall unlawfully enter upon, or take or hold possession of, any such land, or any other land or hereditaments belonging to such parish, or to the churchwardens or overseers, or to either of them, it shall be lawful for such churchwardens and overseers, or any of them, after such notice and demand of possession as is by this Act directed in the case of parish houses (*supra*), to exhibit a complaint against the person in possession of such land before two justices of the peace, who shall proceed thereon, and hear and determine the matter thereof: and if they shall find and adjudge the same to be true, they shall cause possession of such land to be delivered to such churchwardens and overseers, or some of them, in like manner as by this Act is directed with regard to parish houses. *Id.* s. 25.

These provisions have been extended to the guardians of unions and parishes, by stat. 5 & 6 Will. 4, c. 69, s. 5.

*Prosecutions under stat. 14 & 15 Vict. c. 11.*] By stat. 14 & 15 Vict. c. 11, which makes it a misdemeanor to refuse or neglect to supply necessary food to apprentices or servants, or unlawfully to assault them, it is enacted by sect. 6, that for any offence against that Act,—or for any injury inflicted upon a poor person under the age of sixteen, amounting to felony, or an attempt to commit a felony, or an assault with intent to commit a felony, two justices may certify that the prosecution should be conducted by the guardians, or, where there are no guardians, by the overseers of the poor of the parish, who shall thereupon conduct the prosecution, and pay the expenses out of the union or parish fund.

*Actions against them.*] Overseers may be sued in the same manner, and for the same causes of action, as any other individuals. If all the churchwardens and overseers join in an

order for goods to be supplied to the poor, they are all jointly liable; and even where an assistant overseer also joined in such an order, he was holden to be jointly liable with the others. *Kirby v. Bannister*, 3 B. & Ad. 1069. But if the order be given by one only, then it must depend upon the particular circumstances of the case, whether the others are jointly liable with him: *Eden v. Titmarsh*, 1 Ad. & El. 691: if the goods were furnished upon the credit of the overseer alone who ordered them, he alone would be liable; but if the credit were given to the parish, then his co-overseers, &c., would be jointly liable with him. *Id.* So, where at the request of one overseer, but without the knowledge of the others, a party paid several sums to a pauper residing out of the parish, and no demand of repayment was made upon the overseers generally until after they were out of office: it was holden to be a question proper to be left to the jury to say, whether under these circumstances the party ought not to be considered as having relied upon the sole responsibility of the overseer at whose request the payment was made. *Malkin v. Vickerstaff*, 3 B. & A. 89. But where one overseer borrows money on account of his parish, he alone is liable for the repayment of it: his co-overseers are not; for it is no part of the duty of an overseer to borrow money for parochial purposes, and therefore no contract to repay it can be implied upon the part of those who were not actual parties to the borrowing of it. *Hov v. Kaeck*, 1 Bott, 339. *Massey v. Knowles*, 3 Stark. 65. Nor can overseers, by their contracts, render their successors liable. *Snowden v. Emsley*, 3 Stark. 28. *Chambers v. Jones et al.*, 19 Law J. 239, *ex.*

If a surgeon attend a pauper, without the orders or sanction of the overseers, he cannot afterwards sue the overseers for the amount of his bill, unless they have expressly promised to pay it. *Atkins v. Banwell*, 2 East, 505. *Gent v. Tomkins*, 5 B. & C. 746, *n.* *Watling v. Walters*, 1 Car. & P. 132. *Lyde v. Higgins*, 1 Smith, 305. *Wing v. Mill*, 1 B. & A. 104, or be under a legal obligation to have found medical assistance for the pauper. *Tomlinson v. Bentall*, 5 B. & C. 788; and see *Lamb v. Bunce*, 4 M. & S. 275. *Paynter v. Williams*, 1 Cr. & M. 810. As to actions against them for alleged illegal distress for poor rate, see *Priestley v. Watson*, 2 Cr. & M. 691.

In all actions against them, for anything done by them touching or concerning their office, the venue must be laid in the county where the fact was committed; 21 J. 1, c. 12, s. 5; the defendants may plead the general issue, and give the special matter in evidence; *Id.* s. 3; 7 J. 1, c. 5; and if they

have a verdict, or the plaintiff become nonsuit, &c., they shall have double costs. *Id.* See also 43 Eliz. c. 2, s. 19.

#### 6. ASSISTANT OVERSEERS.

The inhabitants of any parish in vestry assembled, [or of any township, village, or place, having separate overseers of the poor and maintaining their poor separately, in a meeting of the inhabitants thereof, holden after due and legal notice, sect. 35,] may nominate and elect any discreet person and persons to be assistant overseer or overseers of the poor of such parish, &c., and determine and specify the duties to be by him or them executed and performed, and fix such yearly salary for the execution of the said office, as shall by such inhabitants be thought fit;—and any two justices of the peace shall, by warrant under their hands and seals, appoint the person or persons so nominated and selected, to be assistant overseer or overseers of the poor, for such purposes and with such salary as shall have been fixed by the inhabitants; and every person so appointed shall execute such of the duties of overseer of the poor, as shall in the warrant for his appointment be expressed, in the same manner as they may be executed by any ordinary overseer of the poor; and he shall continue to be assistant overseer, until he shall resign the office, or his appointment be revoked by the inhabitants in vestry, &c., assembled—and the said inhabitants upon their electing an assistant overseer, may require and take security for the faithful execution of his office, by bond, with or without a surety, in such penalty as they shall think fit, to be made to the [churchwardens and] overseers, who, on breach of the condition, may put the same in suit by the direction of the vestry, &c. 59 Geo. 3, c. 12, s. 7.

The appointment may be thus:—*Berkshire*:—*Whereas A. B., of —, was on —, at —, duly nominated and elected by the inhabitants of the parish of C. then and there in vestry assembled, to be assistant overseer of the poor of the said parish; and the said inhabitants did then and there determine and specify the following duties of overseer of the poor, which by the said A. B. shall be executed and performed, that is to say, [here specify the duties]: and the said inhabitants then and there did also fix the yearly salary of*

*the said A. B. to be £—, for his execution of the said office, to be paid to him [at four quarterly payments in every year, that is to say, at —, &c.]: we therefore, two of Her Majesty's justices of the peace in and for the said county, in pursuance of the statute in such case made and provided, do hereby appoint the said A. B., so nominated and elected as aforesaid, to be assistant overseer of the poor of the said parish, for the purpose of executing the said duties so specified, and with the said yearly salary so fixed, by the said inhabitants in vestry assembled as aforesaid.*  
*Given under our hands and seals, &c.*

But if a collector of poor rates be appointed for the parish. under an order of the poor law commissioners or of the poor law board, all power of the inhabitants of any parish in vestry assembled, or of justices of the peace, or of any person other than the board of guardians of the parish or union, to appoint any collector for any such parish, and (except when otherwise directed by the commissioner) all appointments under such powers shall cease. 7 & 8 Vict. c. 101, s. 62. It seems, if the guardians, by direction of the poor law board, have appointed a collector, with the duties of assistant overseer, the vestry cannot thereafter appoint an assistant overseer. *R. v. Greene*, 17 Q. B. 793.

The office of assistant overseer is not incompatible with that of overseer, and his appointment as overseer does not vacate the office of assistant overseer. *Worth v. Newton*, 10 Exch. 247. But an assistant overseer cannot be appointed a guardian. 5 & 6 Vict. c. 57, s. 14.

The assistant overseer is to give security to the guardians, and if no guardians, to the overseers. 7 & 8 Vict. c. 101 s. 61.

PAID OFFICERS.

1. *Paid Officers generally, 337.*
2. *Particular Officers, 345.*
3. *Officers of the Workhouse, 377.*

1. PAID OFFICERS GENERALLY.

<i>Their appointment, 337.</i>	<i>Disobeying justices or guardians, 343.</i>
<i>Qualification required, 340.</i>	<i>Furnishing goods, &amp;c., to the poor, for their own profit, 343.</i>
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<i>Personal discharge of their duties, 343.</i>	
<i>In what cases to account, 343.</i>	

*Their appointment.*] The poor law commissioners may, by order under their hands and seal, direct the overseers or guardians of any parish or union, or of so many parishes or unions as the said commissioners in such order may specify and declare to be united for the purpose only of appointing and paying officers,—to appoint such paid officers,\* with some qualifications as the said commissioners shall think necessary, for superintending or assisting in the administration of the relief and employment of the poor, and for the examining and auditing, allowing or disallowing of accounts in such parish or union or united parishes, and otherwise carrying the provisions of this Act into execution; and the said commissioners may define and direct the execution of the respective duties of such officers, and the places or limits within which the same shall

\* The word "*officer*" includes "any clergyman, schoolmaster, person duly licensed to practise as a medical man, vestry clerk, treasurer, collector, assistant overseer, governor, master or mistress of a workhouse, or any other person who shall be employed in any parish or union, in carrying this Act or the laws for the relief of the poor into execution, and whether performing one or more of the above-mentioned functions." 4 & 5 Will. 4, c. 76, s. 109.



be performed, and direct the mode of the appointment and determine the continuance in office or dismissal of such officers, and the amount and nature of the security to be given by such of them as the said commissioners shall think ought to give security; the commissioners also, when they may see occasion, may regulate the amount of salaries of the officers, the time and mode of payment, and the proportions in which the parishes or unions shall contribute to them. 4 & 5 Will. 4, c. 76, s. 46. See *R. v. Poor Law Commissioners*, 11 Ad. & El. 558. *R. v. Braintree*, 10 Law J. 76, m.; 1 Q. B. 180. And the authority of the poor law commissioners in this respect, extends as well to parishes regulated by local Acts as to those which are not. *R. v. Poor Law Commissioners, re St. James's, Westminster*, 20 Law J. 236, m. Also in unions under Gilbert's Act it has been holden that the commissioners have authority to order the guardians to appoint an auditor and clerk to the guardians, these being officers within the meaning of the above section, but they cannot assign to them other duties than such as are above mentioned. *R. v. Poor Law Commissioners, in the matter of Allstonfield Union*, MS. H. 1840; 11 Ad. & El. 558. Under this section, however, it was holden that the commissioners had no authority to order the guardians of a union to appoint a collector of rates for any particular parish in the union; *R. v. Poor Law Commissioners, in the matter of St. Andrew's Parish*, MS. H. 1839; S. C. 9 Ad. & El. 901; they have since, however, had authority to make such an order given to them by statute. 7 & 8 Vict. c. 101, s. 62. As to their power of removing such officers,—it has been holden by Erle, J., that the commissioners, by their order, may remove any paid officer, at their discretion, without giving him notice of their intention to do so, or hearing what he has to say in his defence. *Re Teather and the Poor Law Commissioners*, 19 Law J. 70, m. Also the commissioners cannot themselves appoint, nor can they order any other than the guardians to appoint, any of these paid officers. *R. v. Hunt*, 9 Law J. 86, m.; 12 Ad. & El. 130.

No person shall be eligible to hold any parish office, or have the management of the poor in any way, who shall have been convicted of felony, fraud, or perjury. 4 & 5 Will. 4, c. 76, s. 48.

The commissioners may also by their order remove any master of any workhouse, or assistant overseer, or other paid officer of any parish or union, and require others to be appointed in their stead; and the person so removed shall not afterwards be appointed to any paid office without the consent of the commissioners. 4 & 5 Will. 4, c. 76, s. 48. Nor is he capable of being elected a guardian of the poor within

five years after the date of his dismissal. 5 & 6 Vict. c. 57, s. 14.

As to the appointment of paid officers generally, the consolidated order of the poor law commissioners, 24th July, 1847, provides:—

*Art. 153.* The guardians shall, whenever it may be requisite, or whenever a vacancy may occur, appoint fit persons to hold the under-mentioned offices, and to perform the duties respectively assigned to them.

1. Clerk to the Guardians.
2. Treasurer of the Union.
3. Chaplain.
4. Medical Officer for the Workhouse.
5. District Medical Officer.
6. Master of the Workhouse.
7. Matron of the Workhouse.
8. Schoolmaster.
9. Schoolmistress.
10. Porter.
11. Nurse.
12. Relieving Officer.
13. Superintendent of Out-door Labour.

And also such assistants as the guardians, with the consent of the commissioners, may deem necessary for the efficient performance of the duties of any of the said offices.

*Art. 154.* The officers so appointed to or holding any of the said offices, as well as all persons temporarily discharging the duties of such offices, shall respectively perform such duties as may be required of them by the rules and regulations of the commissioners in force at the time, together with all such other duties, conformable with the nature of their respective offices, as the guardians may lawfully require them to perform.

Provided always, that every regulation applying to any officer holding his office under this order, shall apply to any officer of the like denomination appointed by the guardians, although such officer may have been appointed before this order shall have come into force.

*Art. 155.* Every officer and assistant, to be appointed under this order, shall be appointed by a majority of the guardians present at a meeting of the board, consisting of more than three guardians, or by three guardians if no more be present. Every such appointment shall, as soon as the same has been made, be reported to the commissioners by the clerk.

*Art. 156.* No appointment to any of the offices specified in *Art. 153* shall be made under this order, unless a notice that the question of making such appointment will be brought

before the board has been given and entered on the minutes, at one of the two ordinary meetings of the board next preceding the meeting at which the appointment is made, or unless an advertisement giving notice of the consideration of such appointment shall have appeared in some public paper by the direction of the guardians at least seven days before the day on which such appointment is made: provided that no such notice or advertisement shall be necessary for the appointment of an assistant or temporary substitute.

*Qualification required.]* By the consolidated order,—

*Art. 162.* No person shall hold the office of clerk, treasurer, master, or relieving officer under this order who has not reached the age of twenty-one years.

*Art. 163.* No person shall hold the office of master of a workhouse, or matron of a workhouse having no master, unless he or she be able to keep accounts.

*Art. 164.* No person shall hold the office of relieving officer unless he be able to keep accounts, and unless he reside in the district for which he may be appointed to act, devote his whole time to the performance of the duties of his office, and abstain from following any trade or profession, and from entering into any other service.

*Art. 165.* No person shall hold the office of nurse who is not able to read written directions on medicines.

*Art. 166.* Provided always, that the guardians may, with the consent of the commissioners previously obtained, but not otherwise, dispense with any of the conditions specified in Arts. 162, 163, 164, and 165.

*Art. 167.* No person shall be appointed to the office of master, matron, schoolmaster, schoolmistress, porter, or relieving officer, under this order, who does not agree to give one month's notice previous to resigning the office, or to forfeit one month's amount of salary, to be deducted as liquidated damages from the amount of salary due at the time of such resignation.

As to the qualification of the surgeon, see *post*, p. 350; of the chaplain, *post*, p. 377.

*Remuneration.]* By the consolidated order,—

*Art. 172.* The guardians shall pay to the several officers and assistants appointed to or holding any office or employment under this order, such salaries or remuneration as the commissioners may from time to time direct or approve.

Provided that the guardians, with the approval of the commissioners, may pay to any officer or person employed by such guardians a reasonable compensation on account of the extraordinary services, or other unforeseen circumstances connected

with the duties of such officer or person, or the necessities of the union.

*Art. 173.* The salary of every officer or assistant appointed to, or holding any office or employment under this order, shall be payable up to the day on which he ceases to hold such office or employment, and no longer.

*Art. 174.* If no remuneration or salary be expressly assigned to the treasurer, the profit arising from the use of money from time to time left in his hands shall be deemed to be the payment of his services.

*Art. 175.* An officer who may be suspended, and who may, without the previous removal of such suspension, be dismissed by the commissioners, shall not be entitled to any salary from the date of such suspension.

*Art. 176.* The guardians shall not pay to any officer bound to account, to be hereafter appointed, who may have been removed, or who may be under suspension from his office, any salary claimed by such officer, until his accounts shall have been audited by the auditor.

*Security, in what cases required.]* By the consolidated order,—

*Art. 184.* Every treasurer, master, matron of a workhouse in which there is no master, collector, or relieving officer, every person hereafter appointed as clerk, and every other officer whom the guardians shall require so to do, shall respectively give a bond conditioned for the due and faithful performance of the duties of the office, with two sufficient sureties, not, in the case of any security to be hereafter entered into, being officers of the same union; and every officer who shall have entered into any such security shall give immediate notice to the guardians of the death, insolvency, or bankruptcy of either of such sureties, and shall, when required by the guardians, produce a certificate, signed by two householders, that his sureties are alive, and believed by them to be solvent; and such officer shall supply a fresh surety, in the place of any such surety who may die, or become bankrupt or insolvent.

*Art. 185.* Provided that the guardians may, if they think fit, take the security of any society or company expressly authorized by statute to guarantee or secure the faithful discharge of the duties of such officers.

*Art. 186.* Provided also, that the guardians may, with the consent of the commissioners, dispense with such security in the case of any banking firm acting as treasurer, or in the case of a treasurer being a banker or partner of such firm.

*See Bamford et al. v. Iles et al., 18 Law J. 48, m.*

*Their continuance in office.]* By the consolidated order,—

*Art. 187.* Every officer appointed to or holding any office under this order, other than a medical officer, shall continue to hold the same until he die, or resign, or be removed by the commissioners, or be proved to be insane, to the satisfaction of the commissioners.

*Art. 188.* Provided always, that every porter, nurse, assistant, or servant may be dismissed by the guardians without the consent of the commissioners; but every such dismissal, and the grounds thereof, shall be reported to the commissioners.

*Art. 189.* If any master and matron hereafter appointed be husband and wife, and one of them should be dismissed by order of the commissioners, or shall otherwise vacate his or her office, or should die, the other or survivor shall, at the expiration of the then current quarter, cease to hold his or her office of master or matron, as the case may be.

*Art. 190.* No officer of a workhouse, who may have been dismissed by any order of the commissioners, shall after such dismissal remain upon the workhouse premises, or enter therein for the purpose of interfering in the management of such workhouse, unless the commissioners have consented to his subsequent appointment to an office in such workhouse, under the provisions of the said first-recited Act, or to his temporary employment therein.

As to the time the medical officer,—either of the workhouse, or of the district,—shall retain his office, see *post*, p. 350.

*Art. 192.* The guardians may, at their discretion, suspend from the discharge of his or her duties, any master, matron, schoolmaster, schoolmistress, medical officer, relieving officer, or superintendent of out-door labour; and the guardians shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to the commissioners; and if the commissioners remove the suspension of such officer by the guardians, he or she shall forthwith resume the performance of his or her duties.

*Art. 193.* If any officer, or assistant, appointed to or holding any office or employment under this order, be at any time prevented by sickness or accident, or other sufficient reason, from the performance of his duties, the guardians may appoint a fit person to act as his temporary substitute, and may pay him a reasonable compensation for his services; and every such appointment shall be reported to the commissioners as soon as the same shall have been made.

*Art. 194.* The vice-chairman, or some guardian to be appointed by the guardians, may perform any of the duties assigned to the clerk, until any vacancy in the office shall have

been filled, or until a substitute be appointed in the case of the sickness, accident, or absence of the clerk.

*Art. 195.* When any officer may die, resign, or become legally disqualified to perform the duties of his office, the guardians shall, as soon as conveniently may be after such death, resignation, or disqualification, give notice thereof to the commissioners, and proceed to make a new appointment to the office so vacant in the manner prescribed by the above regulations.

*Art. 196.* If any officer give notice of an intended resignation, to take effect on a future day, the guardians may elect a successor to such officer, in conformity with the above regulations, at any time subsequent to such notice.

*Personal discharge of their duties.]* By the consolidated order,—

*Art. 198.* In every case not otherwise provided for by this order, every officer shall perform his duties in person, and shall not intrust the same to a deputy, except with the special permission of the commissioners on the application of the guardians.

*Art. 199.* Every medical officer shall be bound to visit and attend personally, as far as may be practicable, the poor persons intrusted to his care, and shall be responsible for the attendance on them.

*In what cases to account.]* Every treasurer or other person having the collection, receipt or distribution of the money assessed for the relief of the poor in any parish or union, or holding or accountable for any balance or sum of money, or any books, deeds, papers, goods or chattels relating to the relief of the poor, or the collection or distribution of the poor rate, shall account, in such manner as is mentioned, *post*, p. 346. 4 & 5 Will. 4, c. 76, s. 47.

*Disobeying justices or guardians.]* If any master of a work-house, or other officer of any parish or union, shall wilfully disobey the legal and reasonable orders of justices and guardians in carrying the rules, orders, and regulations of the commissioners or assistant commissioners, or the provisions of this Act, into execution,—every such offender, upon conviction before any two justices, shall forfeit and pay not more than 5*l.* *Id.* s. 94.

*Furnishing goods, &c. to the poor, for their own profit.]* It shall not be lawful for any person, filling an office concerned in the administration of the laws for the relief of the poor, to

furnish or supply, for his own profit, or on his own account, any goods, materials, or provisions ordered to be given in parochial relief, or to furnish or supply any goods, materials, or provisions for or in respect of any money ordered to be given in parochial relief to any person in such parish or union; and every person so offending shall, on conviction before any two justices of the peace, be subject to a penalty of 5*l.*, one-half to be paid to the informer, the other half in aid of the poor rates of such parish or union. *Id.* s. 77.

The statute provides also that so much of stat. 55 Geo. 3, c. 137, as inflicts a penalty on persons having the management of the poor, if concerned in providing, or in any contract for the supply of any goods, materials or provisions for the use of any workhouse, or otherwise for the support or maintenance of the poor, for their own profit, shall apply to all officers appointed under the provisions of this Act. *Id.* s. 51. See *ante*, p. 330.

*Receipt and payment of money by officers.]* Also, by the consolidated order, it is provided with regard to the receipt and payment of money by officers,—

*Art.* 218. No clerk, relieving officer, master, or other officer appointed to or holding any office under this order, shall, directly or indirectly, receive or bargain to receive any gratuity, per-centage, or allowance of any kind with reference to any contract with the guardians, or in respect of any payment made or to be made for goods supplied or work executed according to the order of such guardians, or on their behalf.

*Art.* 219. No clerk shall directly or indirectly cause to be paid to himself, or shall pay away on his own account, or for his own benefit, any cheque drawn by the guardians, and made payable to any person other than himself.

*Art.* 220. Every clerk receiving any cheque or money from the guardians, on account of any other party, shall transmit the same within fourteen days to the proper persons, and shall produce the receipt or acknowledgment for the same at the next ordinary meeting after the same has come to his hands.

*Art.* 221. Every officer of the union who may receive money on behalf of the guardians thereof, shall forthwith pay the same into the hands of the treasurer of the union, to the credit of the guardians, notwithstanding that any salary or balance may be due from the union to such officer.

*Art.* 222. No relieving officer, or other officer of any guardians, nor any assistant overseer or collector, shall receive money for the relief of any non-settled pauper on behalf of any officer, or of the guardians, of any other parish or union, or shall constitute himself in any way the agent of any officer or guardians of such other parish or union, except as is provided in this order.

*Art. 223.* If any money be transmitted to any officer, contrary to the provisions of this order, such officer shall forthwith pay such money into the hands of the treasurer of the union whose officer he is, and shall report to the guardians at their next meeting the fact that such money has been so received and paid, and shall make a true entry accordingly in his accounts.

*Embezzling or misapplying monies, &c.]* If any master of a workhouse, or other paid officer, or any other person employed by or under the authority of the said guardians, shall purloin, embezzle, or wilfully waste or misapply any of the monies, goods, or chattels belonging to any parish or union, every such offender shall (besides and in addition to such pains and penalties as such persons shall, independently of this Act, be liable to) forfeit and pay for every such offence any sum not exceeding 20*l.*, and also treble the amount or value of such money, goods, or chattels so purloined, embezzled, wasted, or misapplied; and every person so convicted shall thereafter be incapable of serving office under this or any other Act in relation to the relief of the poor. 4 & 5 Will. 4, c. 76, s. 97. An information on this section, for misapplying money belonging to a parish, was holden bad, because it did not allege that the defendant "wilfully" misapplied it. *Carpenter v. Mason et al.*, 12 Ad. & El. 629.

## 2. PARTICULAR OFFICERS.

*Clerk to the Guardians*, 345.

*Treasurer*, 346.

*Relieving Officer*, 348.

*Medical Officer*, 350.

*District Auditor*, 359.

### *Clerk to the Guardians.*

The guardians of every union shall appoint a clerk, whose duties are stated, *ante*, p. 216.

A *quo warranto* lies to try the question as to whether the clerk was rightly appointed. *R. v. St. Martin's-in-the-Fields*, 17 Q. B. 149.

The following directions shall be implicitly attended to in conducting the official correspondence of the union with the poor law board in London:—

1. That no documents, except returns signed by the clerk, be transmitted to the board unaccompanied by a letter authenticating it.



2. That every distinct subject of communication, whether relating to the union or to any separate parish in it, form a distinct letter on a separate sheet of foolscap paper.

3. That where previous communications have taken place on the same subject, the official number and date of the last communication be quoted.

4. That the name of the union and day of meeting of the board of guardians, and where the meetings are held otherwise than weekly, the date of the meeting next following the communication, be placed at the head of all communications from the guardians to the board.

5. That all communications and packages from the country which are directed to the board, be, as far as the arrangements of the post-office will permit, transmitted through the post, and be directed, under cover,

*"To the Poor Law Board,  
Whitehall, London."*

#### *Treasurer.*

The guardians shall also appoint a treasurer.

By the consolidated order,—

*Art. 203.* The following shall be the duties of the treasurer of the union:—

No. 1. To receive all monies tendered to be paid to the guardians, and to place the same to their credit.

No. 2. To pay out of any monies for the time being in his hands, belonging to the guardians, all orders for money which shall be drawn upon him, in conformity with *Art. 84*, when the same shall be presented at the house or usual place of business of the treasurer, and within the usual hours of business.

No. 3. To keep an account, under the proper dates, of all monies received and paid by him as such treasurer, to balance the same at Lady-day and Michaelmas in every year, and to render an account of such monies to the guardians when required by them to do so.

No. 4. Whenever there are not funds belonging to the guardians in his hands, as treasurer of the union, to report in writing the fact of such deficiency to the commissioners.

No. 5. To submit a proper account, together with the bonds of any officers which may be in his custody, to the auditor at the place of audit, and at the time and in such manner as may be required by the regulations of the commissioners.

No. 6. To receive the monies payable to him as treasurer of the union under any Act of parliament or other authority of law.

*Art. 204.* Provided that the regulations in Art. 203 shall not be applicable to cases in which the governor and company of the Bank of England may act as treasurer of the union or bankers to the guardians.

*Art. 174.* If no remuneration or salary be expressly assigned to the treasurer, the profit arising from the use of money from time to time left in his hands shall be deemed to be the payment of his services.

Where a bond, with sureties, was given by the treasurer, the condition of which stated that the treasurer on resigning his office, or being removed therefrom, shall account for, hand over, and pay over to the said guardians, or to such person as they or the poor law commissioners may appoint, all books and papers, balances, monies, matters, or things, belonging, due, or relating to the said union, or any parishes or parish thereof, the treasurer, instead of receiving monies collected for poor rates by certain of the overseers of parishes within the union who were farmers with whom he had dealings as a corn merchant, allowed the amount collected for poor rates in his private account with them, giving them credit for the same, and setting it off against monies due from him for corn he had purchased from them. He then entered such items in the books of the union as if the poor rates had been actually paid over. The accounts of the treasurer were audited from time to time by the auditor, and such items allowed. On the last audit before the treasurer's removal from office a balance of 239*l.* 1*s.* 7*d.* appeared. The court held that the surety was liable for this amount. *Belford Union Guardians v. Pattison*, 21 J. P. 181.

In another case, where the treasurer had given a bond, with sureties, and one of the duties prescribed by the orders of the poor law commissioners was, "to pay out of the money for the time being in his hands belonging to the guardians all orders for money which should be drawn upon him in conformity with Art. 84, when the same should be presented for payment at the house or usual place of business of the treasurer." On Friday several orders of the guardians were presented by their clerk at the treasurer's bank, and paid, partly in cash, the residue in 5*l.* bank notes of the bank. At about 11 o'clock, A.M., on Monday following, other orders of the guardians were presented by their clerk, and paid, partly in cash, and the residue in 200*l.* of similar bank notes, and a common banker's draft upon bankers in London for 4*l.* 19*s.* 8*d.* was received in exchange for a draft by the guardians in favour of persons in London. At 3 P.M. of the same Monday, the bank stopped payment, and next day the treasurer was declared a bankrupt. At the time the orders were presented, the treasurer had in his hands money of the

guardians sufficient to meet them. At the time the bank stopped payment, the guardians had in their hands 95*l.* of the notes received on the Friday, and the 200*l.* received on the Monday; the draft on London was returned dishonoured. The guardians brought an action against the surety of the treasurer to recover these amounts, and the court held, that the surety was not liable, because, as to the notes received on Friday, the guardians, by keeping them over Saturday, had elected to treat them as payments. As to the notes received on Monday, as well as those on Friday, by not demanding cash, the surety was discharged. *Lichfield Union Guardians v. Greene*, 21 J. P. 198.

*Relieving Officer.*

The board of guardians shall also appoint relieving officers for the different districts into which the union may be divided for general relief. *Ante*, p. 339, Art. 153; and see Art. 152.

And by the consolidated order,—

*Art. 215.* The following shall be the duties of a relieving officer:—

No. 1. To attend all ordinary meetings of the guardians, and to attend all other meetings when summoned by the clerk.

No. 2. To receive all applications for relief made to him within his district, or relating to any parish situated within his district, and forthwith to examine into the circumstances of every case, by visiting the house of the applicant (if situated within his district), and by making all necessary inquiries into the state of health, the ability to work, the condition and family, and the means of such applicant, and to report the result of such inquiries in the prescribed form to the guardians at their next ordinary meeting, and also to visit from time to time, as requisite, all paupers receiving relief, and to report concerning the same as the guardians may direct.

No. 3. In any case of sickness or accident requiring relief by medical attendance, to procure such attendance by giving an order on the district medical officer, in the form (V.) hereunto annexed, or by such other means as the urgency of the case may require.

No. 4. To ascertain from time to time from the district medical officer the names of any poor persons whom such medical officer may have attended or supplied with medicines, without having received an order from himself to that effect.

No. 5. In every case of a poor person receiving medical relief, as soon as may be, and from time to time afterwards,

to visit the house of such person, and, until the next ordinary meeting of the guardians, to supply such relief (not being in money) as the case on his own view, or on the certificate of the district medical officer, may seem to require.

No. 6. In every case of sudden or urgent necessity, to afford such relief to the destitute person as may be requisite, either by giving such person an order of admission into the workhouse, and conveying him thereto if necessary, or by affording him relief out of the workhouse, provided that the same be not given in money, whether such destitute person be settled in any parish comprised in the union or not.

No. 7. To report to the guardians at their next ordinary meeting all cases reported to him by an overseer in conformity with Art. 218, and to obey the directions of the guardians with reference to the relief administered in such cases.

No. 8. To perform the duties with respect to pauper apprentices prescribed by Arts. 60, 61, and 62.

No. 9. To give all reasonable aid and assistance at the request of any other relieving officer of the union, by examining into the case of any applicant for relief, or administering relief to any pauper whose name has been entered on the books of such other relieving officer, and who may be within his own district.

No. 10. Duly and punctually to supply the weekly allowances of all paupers belonging to his district, or being within the same, and to pay or administer the relief of all paupers within his district to the amount and in the manner in which he may have been lawfully ordered by the guardians to pay or administer the same.

No. 11. To visit, relieve, and otherwise attend to non-settled poor, being within his district, according to the directions of the guardians, whose officer he is, and in no other way, subject always to the obligation imposed on him in cases of sudden or urgent necessity.

No. 12. To set apart one or more pages in his out-door relief list, in which he shall duly and punctually enter up the payments made by authority of his own board of guardians to non-settled poor, and to take credit for such payments in his receipt and expenditure book.

No. 13. To present his weekly accounts to the clerk for his inspection and authentication before every ordinary meeting of the guardians, and to the guardians, at such meeting, for their approval.

No. 14. To submit to the auditor of the union all his books, accounts, and vouchers, at the place of audit, and at such time, and in such manner, as may be required by the regulations of the commissioners.

No. 15. To assist the clerk in conducting and completing

the annual or other election of guardians, according to the regulations of the commissioners.

No. 16. To observe and execute all lawful orders and directions of the guardians applicable to his office.

*Art. 216.* The relieving officer shall in no case take credit in his accounts, or enter as paid, or given by way of relief, any money or other articles which have not been paid or given previously to the taking of such credit, or the making of such entry; and he shall not take credit in such accounts for any money paid to any tradesman or other person, without producing, at the next ordinary meeting of the guardians, a bill from such tradesman or person with voucher of payment.

### *Medical Officer.*

*Appointment, 350,*

*For what time, 350.*

*Qualification, 352.*

*Maximum area and population of medical districts, 353.*

*Rates of payment in surgical and midwifery cases, 354.*

*Substitutes for medical officers, 355.*

*Mode of obtaining medical relief by permanent paupers, 355.*

*Duties of the medical officer generally, 356.*

*Duties of a district medical officer, 357.*

*Duties of the medical officer of the workhouse, 357.*

*Appointment.]* By the consolidated order, Art. 153, the guardians shall appoint a medical officer for the workhouse, and a district medical officer.

*Art. 157.* The guardians shall not, by advertisement or other public notice, printed or written, invite tenders for the supply of medicines, or for the medical attendance on the paupers of the union, unless such advertisement or notice shall specify the district or place for which such supply of medicines and such attendance is required, together with the amount of salary or other remuneration.

*For what time.]* By an order of the poor law board (25th May, 1857), it is directed,—

*Art. 1.* Every medical officer of a workhouse duly qualified at the time of his appointment according to the regulations of the poor law board then in force, shall hold his office until he shall die, or resign, or be proved to be insane by evidence

which the poor law board shall deem sufficient, or become legally disqualified to hold such office, or be removed by the poor law board.

*Art. 2.* Every district medical officer duly qualified as aforesaid, at the time of his appointment, and then being, or within two months after his appointment becoming resident within the district for which he shall be appointed to act, shall hold his office until he shall die, or resign, or be proved to be insane, in the same manner as in the previous article, or become legally disqualified to hold such office, or be removed by the said board, or cease to reside within such district.

*Art. 3.* If a medical officer not fully qualified, or not resident within his district at the time of his appointment, or within two months thereof, shall afterwards complete his qualification, or become resident within such district, as the case may be, the guardians may, upon such completion of his qualification or becoming resident respectively, after giving such notice as would be necessary in respect of an appointment in case the office were vacant, pass a resolution empowering such medical officer to hold his office for the time specified in *Art. 2*, and if they transmit a copy of such resolution to the poor law board, and if that board consent, such officer, being so duly qualified and resident, shall be entitled thenceforth to hold such office accordingly.

*Art. 4.* If the guardians shall elect a district medical officer, whether duly qualified as aforesaid or otherwise, not residing within his district at the time of his appointment, and not becoming resident therein within two months after it, or shall elect as such medical officer a person not duly qualified as aforesaid, but licensed to practise medicine, and residing within his district at such time, the guardians shall employ as a district medical officer such person not residing within his district, or such person not duly qualified as aforesaid (as the case may be), for such time only as the poor law board shall approve of or direct; and when the guardians shall make any such election as in this article specified, they shall cause a special minute to be made and entered on the usual record of their proceedings, stating the reasons which in their opinion make it necessary to employ such person not residing within the district in which he is to act, or not duly qualified as aforesaid, and forthwith transmit a copy of such minute to the said board for their consideration.

*Art. 5.* Where a change in the extent of the district of a medical officer shall be deemed necessary for the more convenient supply of medical relief to the poor, or otherwise for the general benefit of the union or incorporation, and he shall decline to acquiesce therein, the guardians may, with the consent of the poor law board, but not otherwise, and after

six months' notice in writing, signed by their clerk, given to such medical officer, determine his office.

*Art. 6.* Provided that nothing herein contained shall prevent the guardians in any case of emergency, or under any special circumstances, from appointing one or more medical officers to act temporarily for such time and upon such terms as the poor law board shall approve.

*Art. 7.* When any medical officer shall cease to hold his office under any of the provisions herein contained, the guardians shall proceed to make a new appointment to the office rendered vacant, in the manner prescribed by the regulations of the poor law commissioners or poor law board in force at the time, unless by reason of any change in the extent of the district such office as previously constituted shall become unnecessary.

*Art. 8.* If the guardians shall have given notice to determine the continuance in office of any medical officer under this order, and the poor law board shall have consented thereto, the guardians may appoint a successor to such officer at any time subsequent to their receiving such consent; provided, that nothing herein contained shall prevent such officer from being re-appointed if otherwise eligible.

*Qualification.]* By the Medical Act, 22 Vict. c. 21, s. 2, and an order of the poor law board, 10th December, 1859, no person shall be qualified to be appointed to the office of medical officer under any of the orders above referred to, unless he shall be registered as aforesaid, and shall be qualified by law to practise both medicine and surgery in England and Wales, such qualification being established by the production to the board of guardians of a diploma, certificate of a degree, licence, or other instrument granted or issued by competent legal authority, in Great Britain or Ireland, testifying to the medical or surgical, or medical and surgical, qualification or qualifications of the candidate for such office.

And evidence that any candidate was in practice as an apothecary on the 1st day of August, 1815, shall be taken to be equivalent to a certificate to practise from the society of apothecaries of London.

Also, any person being registered as aforesaid, who shall possess a warrant or commission as surgeon or assistant surgeon in Her Majesty's navy, or as surgeon or assistant surgeon in the service of the Honourable East India Company, dated previous to the 1st day of August, 1826, shall be qualified to be appointed to the office of medical officer as aforesaid.

By the Consolidated Order, 24th July, 1847, Art. 169, it is provided that if it be impracticable, consistently with the proper attendance on the sick poor, for the guardians

to procure a person residing within the district in which he is to act, and duly qualified in one of the modes previously recited, to attend to the poor in such district, or that the only person resident within such district, and so qualified, shall have been dismissed from office by the commissioners, or shall be unfit or incompetent to hold the office of medical officer, then and in such case the guardians shall cause a special minute to be made and entered on the usual record of their proceedings, stating the reasons which, in their opinion, make it necessary to employ a person not qualified as required by the said order, and shall forthwith transfer a copy of such minute to the commissioners for their consideration; and the commissioners may permit the employment by such guardians of any person duly licensed to practise as a medical man, although such person be not qualified in one of the four modes required by the said order.

*Art. 170.* Provided also, that the guardians may, with the consent of the commissioners, continue in office any medical officer duly licensed to practise as a medical man already employed by any such guardians, although such medical officer may not be qualified in one of the modes required by the said order.

*Maximum area and population of medical districts.]* By *Art. 158*, the guardians may from time to time divide the union into districts for general and medical relief, with the consent of the commissioners; and on any change in the division of the union into districts for general and medical relief, or in the assignment of relieving officers and medical officers to such districts, the clerk shall report every such change to the commissioners for their approbation.

*Art. 159.* The guardians shall not assign to any medical officer a district which exceeds in extent the area of 15,000 statute acres, or which contains a population exceeding the number of 15,000 persons, according to the then last enumeration of the population published by authority of parliament.

*Art. 160.* Provided that if it be impracticable, consistently with the proper attendance on the sick poor, for the guardians to divide the union into districts containing respectively an area and population less than is specified in *Art. 159*, then and in such case the guardians shall cause a special minute to be made and entered on the usual record of their proceedings, stating the reasons which in their opinion make it necessary to form a district exceeding the said limits, and shall transmit a copy of such minute to the commissioners for their consideration, and if the commissioners signify their approval thereof to such guardians, then and in such case, but not otherwise, such guardians may proceed to assign the said district to a medical officer.



*Paid Officers.*

*Art. 161.* Provided also, that the limit of 15,000 statute acres, prescribed in Art. 159, shall not apply to any medical district situate wholly or in part within the principality of Wales; but no medical district situate wholly or in part within that principality shall be assigned to any medical officer residing more than seven miles from any part of any parish included within such district, unless such district shall have been specially sanctioned by the commissioners in the same manner as is directed in Art. 160.

*Rates of payment in surgical and midwifery cases.]* By the same consolidated order, Art. 177, no salary of any district medical officer shall include the remuneration for operations and services of the following classes performed by such medical officer in that capacity for any out-door pauper, but such operations and services shall be paid for by the guardians, according to the rates specified in this article.

1. Treatment of compound fractures of the thigh . . . . .	}	£ s. d.
2. Treatment of compound fractures or compound dislocations of the leg . . . . .		
3. Amputation of leg, arm, foot, or hand . . . . .		
4. The operation for strangulated hernia . . . . .	}	5 0 0
5. Treatment of simple fractures or simple dislocations of the thigh or leg . . . . .		
6. Amputation of a finger or toe . . . . .	}	3 0 0
7. Treatment of dislocations or fractures of the arm . . . . .		
		2 0 0
		1 0 0

The above rates shall include the payment for the supply of all kinds of apparatus and splints.

*Art. 178.* Provided that except in cases of sudden accident immediately threatening life, no medical officer shall be entitled to receive such remuneration for any amputation, unless he shall have obtained at his own cost the advice of some member of the Royal College of Surgeons of London, or some fellow or licentiate of the Royal College of Physicians of London, before performing such amputation, and unless he shall also produce to the guardians a certificate from such member of the Royal College of Surgeons, or such fellow or licentiate, stating that in his opinion it was right and proper that such amputation should be then performed.

*Art. 179.* Provided also, that if in any case the patient has not survived the operation more than thirty-six hours, and has not required and received several attendances after the operation by the medical officer who has performed the same,

such medical officer shall be entitled only to one-half of the payments respectively subscribed above.

*Art. 180.* Provided also, that if several of the fees specified in Art. 177 become payable with respect to the same person at the same time, and in consequence of the same cause or injury, the medical officer shall be entitled only to one of such fees, and if they be unequal, to the highest.

*Art. 181.* In any surgical case, not provided for in Art. 177, which has presented peculiar difficulty, or required and received long attendance from the district medical officer, the guardians may make to the said medical officer such reasonable extra allowance as they may think fit and the commissioners may approve.

*Art. 182.* In cases in which any medical officer, either for the workhouse or a district, shall be called on by order of a person legally qualified to make such order, to attend any woman in or immediately after childbirth, or shall, under circumstances of difficulty or danger, without any order, visit any such woman actually receiving relief, or whom the guardians may subsequently decide to have been in a destitute condition, such medical officer shall be paid for his attendance and medicines by a sum not less than 10s., nor more than 20s., according as the guardians may agree with such officer.

*Art. 183.* Provided that in any special case in which great difficulty may have occurred in the delivery, or long subsequent attendance in respect of some puerperal malady or affection may have been requisite, any district medical officer shall receive the sum of 2l.

*Substitutes for medical officers.]* By the same consolidated order, Art. 199, every medical officer shall be bound to visit and attend personally, as far as may be practicable, the poor persons entrusted to his care, and shall be responsible for the attendance on them.

*Art. 200.* Every medical officer shall, as soon as may be after his appointment, name to the guardians some legally qualified medical practitioner to whom application for medicines or attendance may be made, in the case of his absence from home, or other hindrance to his personal attendance, and who will supply the same at the cost of such medical officer; and the name and residence of every medical practitioner so named shall be forwarded by the clerk to each relieving officer, and to the overseers of every parish in the district of such medical officer.

*Mode of obtaining medical relief by permanent paupers.]* By the same consolidated order, Art 75, the guardians shall,

once at least in every year, cause to be prepared by the clerk or relieving officers a list of all such aged and infirm persons, and persons permanently sick or disabled, as may be actually receiving relief from such guardians, and residing within the district of each medical officer of the union, and shall from time to time furnish to each district medical officer a copy of the list aforesaid.

*Art. 76.* Every person whose name is inserted in such list shall receive a ticket in the form (L.) hereunto annexed, and shall be entitled, on the exhibition of such ticket to the medical officer of his district, to obtain such advice, attendance, and medicines, as his case may require, in the same manner as if he had received an order from the guardians, and such ticket shall remain in force for the time specified therein, unless such person shall cease to be in the receipt of relief before the expiration of such time.

#### FORM OF TICKET.

_____ UNION.
Date _____
Good until the _____ day of _____ 18
Name of Pauper _____
Residence of Pauper _____
Name of Medical Officer _____
Residence _____
Usual hour at which he is at home _____

*Duties of the medical officer generally.*] By the same consolidated order, Art. 205, the following shall be the duties of every medical officer appointed by the guardians, whether he be the medical officer for a workhouse or for a district :—

No. 1. To give to the guardians, when required, any reasonable information respecting the case of any pauper who is or has been under his care; to make any such written report relative to any sickness prevalent among the paupers under his care, as the guardians or the commissioners may require of him; and to attend any meeting of the board of guardians when requested by them to do so.

No. 2. To give a certificate respecting children whom it is proposed to apprentice, in conformity with Arts. 59 and 61. See *ante*, p. 211.

No. 3. To give a certificate under his hand in every case to the guardians, or the relieving officer, or the pauper on whom he is attending, of the sickness of such pauper, or other cause of his attendance, when required to do so.

No. 4. In keeping the books prescribed by this order, to employ, so far as is practicable, the terms used or recommended in the regulations and statistical nosology issued by the registrar-general; and also to show when the visit or attendance made or given to any pauper was made or given by any person employed by himself.

*Duties of a district medical officer.*] By the consolidated order, Art. 206, the following shall be the duties of a district medical officer:—

No. 1. To attend duly and punctually upon all poor persons requiring medical attendance within the district of the union assigned to him, and according to his agreement to supply the requisite medicines to such persons, whenever he may be lawfully required to furnish such attendance or medicines by a written or printed order of the guardians, or of a relieving officer of the union, or of an overseer.

No. 2. On the exhibition to him of a ticket, according to Art. 76, (see *ante*, p. 356,) and on application made on behalf of the party to whom such ticket was given, to afford such medical attendance and medicines as he would be bound to supply if he had received in each case an order from the guardians to afford such attendance and medicines.

No. 3. To inform the relieving officer of any poor person whom he may attend without an order.

No. 4. To make a return to the guardians at each ordinary meeting, in a book prepared according to the form marked (P.), and to insert therein the date of every attendance, and the other particulars required by such form, in conformity with Art. 205, No. 4, *supra*.

Provided, however, that the medical officer may, with the consent of the guardians, but not otherwise, make the entries which he is directed to make in such book or detached sheets of paper, according to the same form, and cause the same to be laid before the guardians at every ordinary meeting, instead of such book; and the guardians shall, in that case, cause such sheets to be bound up at the end of the year.

*Duties of the medical officer of the workhouse.*] By Art. 207, the following shall be the duties of the medical officer for the workhouse:—

No. 1. To attend at the workhouse at the periods fixed by the guardians, and also when sent for by the master or matron.

No. 2. To attend duly and punctually upon all poor persons in the workhouse requiring medical attendance, and according to his agreement to supply the requisite medicines to such persons.

No. 3. To examine the state of the paupers on their admission into the workhouse, and to give the requisite directions to the master according to Arts. 91 & 92. See *ante*, p. 196.

No. 4. To give directions and make suggestions as to the diet, classification, and treatment of the sick paupers, and paupers of unsound mind, and to report to the guardians any pauper of unsound mind in the workhouse whom he may deem to be dangerous, or fit to be sent to a lunatic asylum.

No. 5. To give all necessary instructions as to the diet or treatment of children and women suckling children, and to vaccinate such of the children as may require vaccination.

No. 6. To report in writing to the guardians any defect in the diet, drainage, ventilation, warmth, or other arrangements of the workhouse, or any excess in the number of any class of inmates, which he may deem to be detrimental to the health of the inmates.

No. 7. To report in writing to the guardians any defect which he may observe in the arrangements of the infirmary, and in the performance of their duties by the nurses of the sick.

No. 8. To make a return to the guardians, at each ordinary meeting, in a book prepared according to the Form (Q.), and to insert therein the date of every attendance, in conformity with Art. 205, and the other particulars required by such form to be inserted by the medical officer, and to enter in such return the death of every pauper who shall die in the workhouse, together with the apparent cause thereof.

No. 9. To enter in the commencement of such book, according to the Form marked (R.), the proper dietary for the sick paupers in the house in so many different scales as he shall deem expedient.

*District Auditor.*

<i>Formation of the district,</i> 359.	<i>Audit, how,</i> 363.
<i>Election of district auditors,</i> 359.	<i>Taxation of attornies' and solicitors' bills of costs,</i> 365.
<i>Deputy auditor,</i> 361.	<i>Balances, &amp;c., how recovered and applied,</i> 366.
<i>Powers of poor law board over auditors,</i> 362.	<i>Remedy for party aggrieved by audit,</i> 367.
<i>Cessation of powers of jus- tices to audit,</i> 362.	<i>Examination and closing of accounts,</i> 369.
<i>Notice of audit,</i> 362.	<i>Auditing of accounts,</i> 373.
<i>Closing and inspection of ac- counts,</i> 362.	

*Formation of the district.*] By stat. 7 & 8 Vict. c. 101, s. 32, it shall be lawful for the poor law commissioners from time to time, by order under their hands and seal, to combine the parishes and unions in England and Wales into districts for the audit of accounts, and from time to time to add any parish or union to any such district, or separate any parish or union therefrom. 4 & 5 Will. 4, c. 74, s. 46. Thus a city under a local Act may be included in a district. *R. v. Bristol*, 13 Q. B. 405.

The poor law board may order the guardians of a parish not in a union to appoint an auditor. *R. v. St. James*, 1 E. & E. 861. *R. v. Stockton*, 27 L. J. 407, Q. B.

The auditor in his audit is not bound to regard a union not legally formed. *R. v. Shaw*, 29 L. J. 211, Q. B. When an auditor is appointed, the justices' power to audit ceases. 7 & 8 Vict. c. 101, s. 37. *R. v. St. Andrew's*, 6 Q. B. 78.

*Election of district auditors.*] And the chairman and vice-chairman of each board of guardians, or if there be no chairman or vice-chairman, then some two of their number to be selected by the guardians, or if there be no such body, then some two of the overseers to be selected by the overseers respectively acting within the district, shall elect, at the time and in the manner to be prescribed by the commissioners, a person to be the auditor of the district; but in any case in which there are two vice-chairmen appointed in any board of guardians, such board of guardians shall select one of the vice-chairmen who shall vote in the election of such auditors. 7 & 8 Vict. c. 101, s. 32.

The following is the mode in which the election of a district auditor is conducted:—

*Art. 2.* And we do hereby prescribe the time and manner in which such auditor shall be elected, as follows: that is to say,—

On some day within thirty days after the happening of any vacancy in the said office, a poor law inspector, to be determined by the poor law board, shall cause an advertisement to be inserted in one of the newspapers published in the cities of London or Westminster, and in two or more newspapers published within the counties in which the said unions or some of them are situated, giving notice of the vacancy, and inviting persons desirous to become candidates for the office of auditor, to send to him, at some place to be therein specified, their names in full, their profession or occupation, their age and residence, within a time not exceeding fourteen days from the first insertion of such notice in such newspapers as aforesaid.

*Art. 3.* On the expiration of the said term of fourteen days, the poor law inspector shall cause a list to be made of such persons as may have duly offered themselves as candidates, and may have forwarded the information hereinbefore required; and such poor law inspector shall send copies of such list, with the other particulars hereinbefore required, to each of the several chairmen and vice-chairmen of the boards of guardians of the before-mentioned unions respectively, and to such other persons as may be qualified to vote at the election of the auditor for the district, and shall request each elector to return to him, in some writing signed by such elector on or before a day to be specified by such poor law inspector, being not less than seven days, nor more than fourteen days, after the date of such list, the name of the candidate in such list for whom such elector votes.

*Art. 4.* On the day next after the day specified by such poor law inspector for the return of such names, the said poor law inspector shall examine the returns then received by him, and shall cast up the numbers, and shall enter on the said list so made out by him as aforesaid, against the name of each candidate, the names of the several electors who shall have voted for such candidate.

*Art. 5.* If any candidate shall have obtained the majority of the votes of the said electors, the poor law inspector shall certify in writing, at the foot of such list, that such candidate hath been duly elected the auditor for such district.

*Art. 6.* If no candidate have received the votes of the majority of the electors, the poor law inspectors shall again send the names of the two candidates who have received the greatest number of votes to each of the several electors, with a request that each elector will return, in writing signed by him, the name of one of such two persons to the said poor law in-

spector, on or before a day to be specified, being not less than seven days, nor more than fourteen days, after the date of such request.

*Art. 7.* On the day next after the day specified for the second return, the poor law inspector shall examine the returns then received by him, and shall proceed, as on the former occasion, to cast up the number of the votes, and to enter the names of the persons voting, and to certify in writing that the candidate who then has the greater number of votes is elected the auditor of the district.

*Art. 8.* If on the return of the list first sent out by the said poor law inspector, it be found that no candidate has a majority of the votes of the electors, and that the votes are equal in favour of the three candidates who have received the largest number of votes, or in favour of any two of such three candidates, he shall forward on the second occasion the names of all such three candidates, and shall proceed as if the names of the candidates so sent were sent for the first time, except that in the event of there being an equality of votes on the second voting, the election shall be deemed to have failed, and proceedings shall take place as on a new vacancy.

*Art. 9.* If only one candidate shall offer himself to the poor law inspector, the name and address of such person shall be sent by such poor law inspector to all the persons qualified to vote as aforesaid, and such poor law inspector shall request such persons to inform him in writing, on or before a day to be specified, being not less than seven days, nor more than fourteen days, from the date of such request, whether such persons assent or object to such candidate being elected as an auditor; and if the greater number of the electors then entitled to vote shall signify their assent to the election of such person, but not otherwise, the said poor law inspector shall declare the candidate to be duly elected.

*Art. 10.* The poor law inspector shall cause copies of the list showing the names of the voters who shall have voted for each candidate, or in case of no contest, of the electors who shall have expressed their assent to the election of the person nominated, with the name of the person elected as auditor duly certified at the foot thereof, to be printed forthwith, and shall transmit to the guardians of the several unions printed copies thereof, and shall communicate to the person so elected auditor the fact of his having been so elected, and shall advertise the result of the election in some one or more newspaper or newspapers published in the district.

*Deputy auditor.]* The poor law board may at any time, upon sufficient cause being shown to them, authorize any person, selected by the auditor, to act temporarily as his



deputy, and shall communicate to the several unions and places forming his district, the name of the person so appointed to act as his deputy, and such person shall thereupon be empowered to act in all respects, and with the same authorities, and subject to the same duties and liabilities, as the auditor himself is entitled or subject to. 11 & 12 Vict. c. 91, s. 10. And when any auditor shall die, resign, or be removed, or become incompetent to act, at any time when the audit of accounts of the parishes or unions within his district shall not be completed, the poor law board may, by order under their seal, appoint temporarily some other person to audit the accounts of the several parishes or unions which may then be ready to be audited; and such temporary auditor shall have the same powers and authorities, and shall be subject to the same obligations and duties, as the ordinary auditor would have possessed or would have been subject to, and shall receive such remuneration as the said commissioners shall direct for the performance of his services herein. 12 & 13 Vict. c. 103, s. 8.

*Powers of poor law board over the auditors.*] And the said commissioners shall have all the powers with regard to the salaries of the said auditors to be charged in the poor rates, and to all other matters relating to auditors for such districts, as they have with regard to paid officers. *Id.*

But since this enactment, upon the occasion of the repeal of the corn laws, the auditors' salaries and the salaries of teachers in workhouse schools, and half of the medical officers' salaries, are paid out of funds annually voted by parliament for the purpose.

*Cessation of powers of justices to audit.*] In every district for which an auditor may be appointed under the provisions of this Act, the powers of justices of the peace, and of all other persons to examine, audit, allow, or disallow accounts, shall, so far as relates to any accounts which such auditor is authorized to examine and audit, cease, and the same is thereby repealed. *Id.* s. 37, *ante*, p. 359.

*Notice of audit.*] Such auditor shall give or send by post or otherwise to the overseers or other officers fourteen days' notice of the said audit. *Id.* s. 33. It shall also be advertised in some newspaper circulating in the county. 11 & 12 Vict. c. 91, s. 7.

*Closing and inspection of accounts.*] And seven clear days at least before the day fixed for the audit of accounts, the overseers or other officers employed in any parish in carrying

the laws for the relief of the poor into execution, and every collector or assistant overseer acting for such parish, shall cause their rate books and other accounts to be made up and balanced; and the books so made up shall forthwith be deposited at the house within the parish of some one of such overseers or other officers, or of such collector or assistant overseer, or at some other house within the parish; and notice shall forthwith be affixed at the usual place or places of giving parish notices, stating the time and place of audit, as notified by the auditor (*supra*), and the place where the books are deposited; and such books shall on each of such days be open between the hours of eleven and three, for the inspection of every person liable to be rated to the relief of the poor; and if any such overseer or other officer, collector, or assistant overseer, neglect to make up such account, or alter such account, or allow it to be altered when so made up, or refuse to allow such inspection thereof, he shall be liable, on conviction thereof, to forfeit 40s.; and if any such overseer or other officer, collector, or assistant overseer, refuse or wilfully neglect to affix such notice of audit, and of the time and place for the inspection of such accounts, as above provided, he shall be liable, on conviction thereof, to forfeit 40s. 7 & 8 Vict. c. 101, s. 33. An auditor is not to re-open an account previously audited. *R. v. Chiddingstone*, 2 B. & S. 294.

*Audit, how.*] It shall be lawful for every ratepayer in any parish or union to be present at the audit of the accounts relating to such parish or union, and to make any objection to any such accounts before such auditor; and it shall be lawful for any such auditor to require any person holding or accountable for any money, books, deeds, papers, goods, or chattels, relating to the poor's rate or the relief of the poor, to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts; and so often as such person neglects or refuses to attend, either at the audit or any adjournment thereof, when so required by such auditor, or to produce to him such accounts or vouchers, or any of them, or to make or sign a declaration with respect to his accounts, if thereunto required by such auditor, he shall be liable, for every such refusal or neglect, to forfeit 40s., to be recovered as penalties and forfeitures under the said first-recited Act, or if he wilfully make or sign a false declaration in respect of such accounts he shall be liable to the penalties of perjury. *Id.* s. 33.

And every auditor appointed for such a district shall have full powers to examine, audit, allow, or disallow of accounts, and of items therein, relating to monies assessed for and

applicable to the relief of the poor of all parishes and unions within his district, and to all other money applicable to such relief; and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account against such person, and shall certify on the face of every account audited by him any money, books, deeds, papers, goods or chattels, found by him to be due from any person. *Id.* s. 32. Where an auditor, in auditing the accounts of overseers, disallowed the costs paid by them in contesting an appeal against a rate, because they did so without previously obtaining the sanction of the vestry; but after the audit the vestry met, and the expense was sanctioned by them: it was holden that the previous sanction of the vestry was not necessary, and as it was not alleged that the overseers had acted *mala fide* or improvidently, the auditor had no right to disallow the expenses. *R. v. Street*, 22 Law J. 29, m. The auditor is bound to audit accounts in which he himself is interested. *R. v. Great Western Railway Company*, 13 Q. B. 327.

And by stat. 11 & 12 Vict. c. 91, s. 5, where any overseer or officer shall be continuing in office at the time when the accounts are audited, the auditor shall certify as due such sums of money only as shall be disallowed or surcharged by him in the accounts so audited; but where the term of office of such overseer or officer shall have expired at the time when the accounts are audited, he shall ascertain the balance which he shall find to be then due on the accounts so audited, together with the sums (if any) which he shall have disallowed or surcharged, and shall give credit for all sums which shall be proved before him to have been paid in respect of such balance to the succeeding overseers or officers, or otherwise lawfully applied on behalf of the parish or union interested therein, before the date of his audit, and he shall certify, report, and recover, in the manner provided by law, the balance remaining due after such credit shall have been given; and every certificate made by any auditor, if made according to the forms set forth in the schedule hereunto annexed, or to the like effect, shall be deemed to be sufficient: provided always, that where the sum, or the aggregate of the sums disallowed by the auditor in the account of any officer, shall not amount to 40s., the same may be paid over with the balance due from such officer, instead of being paid to the treasurer.

The following are the forms of certificates :—

1. *Against an Accounting Officer.*

*I do hereby certify, that in the account of A. B., the [set out the name of the officer], of the parish of — [or of the — union], I have disallowed [or surcharged] the sum of —.*

*As witness my hand this — day of —, 18—.*

*M. N., auditor of the — district, which comprises the above-named parish or union.*

2. *Against a Person not an Accounting Officer.*

*I do hereby certify, that in the accounts of the — union [or of the parish of —], I have disallowed the sum of — as a payment illegally made out of the funds of such union [or parish], and I find that C. D. of — authorized the making of such illegal payment, and I do hereby surcharge the said C. D. with the same.*

*As witness my hand this — day of —, 18—.*

*M. N., auditor of the — district, which comprises the above-named union or parish.*

And any churchwarden, surveyor of the highways, overseer, or other officer of a parish or union, who shall wilfully authorize or make an illegal or fraudulent payment from the church rate, highway rate, or other public fund of a parish or union, or shall unlawfully make an entry in his accounts for the purpose of defraying or making up to himself or any other person the whole or any part of any sum of money unlawfully expended from the poor rate, or disallowed or surcharged in the accounts of any parish or union by such auditor, shall, upon conviction thereof before any two justices, forfeit and pay for every such offence any sum not exceeding 20*l.*, and also treble the amount of such payment or of the sum so entered in his accounts. 7 & 8 Vict. c. 101, s. 32.

*Taxation of attornies' and solicitors' bills of costs.*] On application of any overseer, or of any board of guardians, or of any attorney-at-law, it shall be the duty of the clerk of the peace of the county or place, or his deputy, if thereunto required, to tax any bill due to any solicitor or attorney in respect of business performed on behalf of any parish or union situate wholly or in part within such county or place; and the

allowance of any sum on such taxation shall be *prima facie* evidence of the reasonableness of the amount, but not of the legality of the charge; and the clerk of the peace shall be allowed for such taxation after the rate to be fixed from time to time by the master of the crown office, and declared by an order of the said commissioners; and if any such bill be not taxed before it is presented to the auditor, the auditor's decision on the reasonableness as well as the legality of the charge shall be final. *Id.* s. 39. There is no power to remove an auditor's decision on an attorney's bill by *certiorari*. *R. v. Napton*, 25 Law J. 296, Q. B. The master of the crown office in pursuance of this provision fixed the rate of allowance to the clerk of the peace in respect of such taxation; and the poor law commissioners, by an order dated the 21st November, 1844, declared, that the clerk of the peace of every county or place in England and Wales, shall be allowed for the taxation of every bill due to any solicitor or attorney, in respect of business performed on behalf of any parish or union, after the rate of 4d. per sheet, or folio, of seventy-two words each.

*Balances, &c., how recovered and applied.*] When any such auditor has so certified any money, books, deeds, papers, goods or chattels, to be due from any person, he shall forthwith report the same to the said commissioners; and the person from whom any money is so certified to be due, shall within seven days pay or cause to be paid such money to the treasurer of the guardians of the union or parish, if there be any such treasurer; and in the case of a union, such money shall be applied by the guardians to the use of all or any of the parishes included in such union, according as all or any of such parishes may be interested in the sum so paid; and all books, deeds, papers, goods, and chattels, and (in the case where there is no treasurer as aforesaid) all monies so certified to be due, shall be delivered over or paid within seven days of the same being certified, to the person or persons authorized to receive the same; and if any such money, books, deeds, papers, goods, or chattels, be not duly paid or delivered over as hereinbefore directed, the said auditor, or any auditor subsequently appointed, shall proceed, as soon as may be, to enforce the payment or delivering over of the same; and all monies so certified to be due by such auditor, shall be recoverable as so certified from all or any of the persons making or authorizing the illegal payment, or otherwise answerable for such monies, and shall be recovered on the application of such auditor, or of any such auditor subsequently appointed, or by any person for the time being entitled or authorized to receive the same, in the same manner as penalties and for-

feitures may be recovered under the provisions of the said first-recited Act; 4 & 5 Will. 4, c. 76; and the expenses attending such proceeding or recovery shall (except so far as the same may be paid by the persons against whom the proceedings have been taken) be repaid to such auditor by the guardians of the parish or union, or by the district board of the district to which the proceedings may respectively relate, and shall be charged in their accounts in such manner and in such proportions as the said commissioners may direct; and if any person from whom any such books, deeds, papers, goods, or chattels, may be due, neglect or refuse to deliver over the same to the person for the time being entitled or authorized to receive the same, the person so neglecting or refusing shall be liable, on the complaint of any such auditor for the time being, or of the person entitled or authorized to receive the same, to the penalties and proceedings provided in the case of overseers refusing or neglecting to pay and deliver over to their successors any sum or sums of money, goods, chattels, and other things in their hands. *Id.* s. 32.

And by stat. 11 & 12 Vict. c. 91, s. 9, in any proceedings to be taken by an auditor, or by his attorney, before justices, to recover sums certified by him to be due, it shall be sufficient for him to produce a certificate of his appointment under the seal of the commissioners, and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which the same relates, and that the sum certified to be due had not been paid to the treasurer of the guardians of the union or of the parish, as the case may require, within seven days after the same had been so certified, nor within three clear days before the laying of the information,—of which non-payment a certificate in writing, purporting to be signed by the treasurer, shall be sufficient proof on the part of the auditor; and if at the hearing of such information it shall be proved that the said sum had been paid to the treasurer subsequently to the date of such last-mentioned certificate, the costs incurred by such auditor shall be paid by the party against whom the information shall be laid, unless he prove that notice of such payment had been given to the auditor twenty-four hours at least prior to the laying of the information. Where the auditor has surcharged a party and a justice's warrant is applied for, the justice is bound to issue the warrant without inquiring into the grounds thereof. *R. v. Finnis*, 1 E. & E. 935. *R. v. Linford*, 7 E. & B. 950.

*Remedy for party aggrieved by audit.*] If any person, aggrieved by any allowance, disallowance, or surcharge by any such auditor, require such auditor to state the reasons for the

said allowance, disallowance, or surcharge, the auditor shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made; and it shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorized to receive the same all such money, goods, and chattels as are admitted by his account to be due from him or remaining in his hands, to apply to the court of Queen's Bench for a writ of *certiorari* to remove into the said court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of orders of justices of the peace; except that the condition of such recognizance shall be, to prosecute such *certiorari* at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said court, and defend the allowance, disallowance, or surcharge, so impeached in the said court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor rates of the union or parish respectively interested in the decision of the question, unless the said court make any order to the contrary; and that on the removal of such allowance, disallowance, or surcharge, the said court shall decide the particular matter of complaint set forth in such statement, and no other; and if it appear to such court that the decision of the said auditor was erroneous, they shall, by rule of the court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the court, order the costs of the person prosecuting such *certiorari* to be paid by the parish or union to which such accounts relate, as to such court may seem fit: which rules of court respectively shall be enforced in like manner as other rules of the said court are enforceable. 7 & 8 Vict. c. 101, s. 35.

Or, it shall be lawful for any person aggrieved as aforesaid by any allowance, disallowance, or surcharge, in lieu of making

application to the court of Queen's Bench for a writ of *certiorari*, to apply to the said commissioners to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said commissioners to issue such order therein, under their hands and seal, as they may deem requisite for determining the question. *Id.* s. 36. Or, by stat. 11 & 12 Vict. c. 91, s. 4, where any appeal shall be made to the said commissioners against any allowance, disallowance, or surcharge made by any auditor in the accounts of any guardians, overseers, or their officers, it shall be lawful for the said commissioners to decide the same according to the merits of the case; and if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may, by an order under their seal, direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge.

#### *Examination and closing of Accounts.*

In respect to the examination, closing and auditing of union accounts and of the accounts in parishes in union, it is provided by the poor law commissioners' general order of accounts, dated 17th March, 1847, as follows:—

*Art.* 18. On the day of every ordinary meeting of the board of guardians, or on the day next before it, unless such day shall be Sunday, and then on the previous Saturday, the clerk shall examine the master's day book, and shall compare the entries of invoices with the invoices themselves, and shall see that all the goods supplied are carried by the master to the proper accounts, and shall certify the correctness of the same by his initials. He shall also compare the entries of payments, in the receipt and payment account therein, with the vouchers, and ascertain that the master has debited this account with all sums received by him, and shall insert his initials at the foot of such account. And he shall inspect the other books required to be kept by the master by this order, so as to ascertain that they are properly kept.

The clerk shall also examine the weekly accounts in each relieving officer's out-door relief list, abstract of the out-door relief list, and receipt and expenditure book, so as to ascertain the accuracy of the entries therein, and shall certify the correctness of the same by his initials.



And the master and relieving officer shall respectively, under the direction of the board of guardians, present their books and accounts to the clerk for his examination on such day as aforesaid.

*Art. 19.* The overseers of every pariah, and every collector acting for any pariah, shall make up and balance to the 25th day of March and the 29th day of September in each year, all such books as they are required, by the Act passed in the 8th year of the reign of Her Majesty Queen Victoria, intituled "*An Act for the Amendment of the Laws relating to the Poor in England,*" to deposit for the inspection of the rate-payers at some house within the pariah seven days at least before the audit.

*Art. 20.* All the accounts of the union and of the officers of the union shall be closed at the end of every half-year, that is to say, up to the 25th day of March and the 29th day of September in each year, or the end of the week nearest thereto. And the several officers keeping such accounts shall forthwith lay, or cause to be laid, their respective accounts so closed before the board of guardians.

*Art. 21.* The master of the workhouse shall, at the end of every half-year, allow each relieving officer to inspect the in-door relief list for the half-year last expired.

And each of the relieving officers shall, within fourteen days after the end of the half-year, inspect the names entered in such in-door relief list, and shall affix a mark in red ink against the name of every pauper who shall have been entered in the out-door relief list in the course of the said half-year.

*Art. 22.* The clerk or medical officer in possession of the district medical relief books shall, at the end of every half-year, allow each of the relieving officers to inspect such books; and each of the relieving officers shall, within fourteen days after the end of the half-year, inspect the names in such books, and shall affix a mark in red ink against the name of every pauper who shall not have received any other relief during the last half-year than medical relief.

*Art. 23.* The clerk shall, under the direction of the board of guardians, prepare from the accounts of the union,—1. A statistical statement showing the number of paupers of all classes actually relieved in the course of the last half-year, and the other particulars, according to the form and directions in the said Schedule B., numbered 16; and—2. A financial statement showing the accounts of the union for the last half-year in the form in the said Schedule B., numbered 17; which statement the clerk shall submit to the auditor at the time of his auditing the union accounts.

The auditor, if satisfied of the correctness of such statements, shall sign the same; and after they have been signed

by the auditor, the clerk shall transmit them to the poor law commissioners, and shall make a duplicate of the financial statement, which shall also be signed by the auditor, and shall be preserved by the clerk for the use of the board of guardians.

*Art. 24.* The clerk shall, as soon as he shall receive notice from the auditor of the day or days appointed by him for the auditing of the half-yearly accounts of the union, and the several parishes comprised therein, cause the following notice to be affixed on the external gate or door of every workhouse in the union, or at some other place or places where union notices are usually affixed, and shall continue the same so affixed until the audit is completed:—

“ ——— Union.

“Notice is hereby given, that the half-yearly statement of the accounts of this union, together with the relief order book and the ledgers, will, on the — day of —, be deposited at —; and such statements and books will be open to be inspected, examined, and copied by any owner of property or ratepayer in the said union, at any reasonable hour in the day-time, when the board of guardians is not sitting, until the — day of —; and that on the last-mentioned day, at the hour of —, the accounts of the union will be audited by —, the auditor of the district comprising this union, at —, when and where every such owner or ratepayer in the union, who may have any objection to any matter contained in the above-mentioned accounts, may attend, and prefer his objection, and the same will be heard by the auditor.

“Dated ———.

——— “Clerk to the Board of Guardians.”

*Art. 25.* The clerk shall, three clear days before the day appointed for auditing the union accounts, deposit the said half-yearly statement of the accounts of the union, together with the relief order book and ledgers, in the board room of the guardians of the union, or such other place as the board of guardians may appoint, and shall permit the said statement, book, and ledgers to be inspected, examined, and copied by any ratepayer or owner of property in the union, in the presence of the clerk or some other person approved of by the board of guardians, at any reasonable hour in the daytime, when the board of guardians shall not be sitting, after the said statement, book, and ledgers shall be so deposited, and previous to the day appointed for the auditing thereof.

*Art. 26.* In case the auditing of any of the said union or parish accounts shall be adjourned for any longer period than from day to day, the clerk, on receiving from the auditor notice thereof, shall affix, in manner aforesaid, notice of the time and place of such adjournment, and of the accounts

remaining to be audited, as often as such adjournment shall be made.

*Art. 27.* Within fourteen days after the 25th day of March and the 29th day of September in every year, the clerk, without waiting for the completion of the said statements or for the audit, shall transmit to the poor law commissioners the following particulars for the half-year just ended, as computed by him at the time :—

1. Total amount of out-door relief for the whole union in the half-year just ended.
2. Cost of in-maintenance of paupers in one sum for the whole union in the half-year just ended.
3. Amount of the cost of maintenance of workhouse establishment, salaries, and all other common charges, distributed according to the averages for the time being.
4. Amount of any salaries paid by the guardians not charged according to the averages.
5. Amount of principal of loans repaid, and the interest thereon.

*Art. 28.* Within fourteen days after the conclusion of the audit of the accounts of the half-year ending the 25th day of March in every year, the clerk shall make up in duplicate, from the balance sheets of the receipts and payments of the overseers, an abstract of the separate accounts of each parish, for the year ending on such 25th day of March, according to the form and directions given in the said Schedule B., numbered 18; and one copy of such yearly abstract shall be signed by the clerk and transmitted to the poor law commissioners, and the other copy, signed also by the clerk, shall be laid before the board of guardians, and preserved with the papers belonging to the union.

*Art. 29.* Every master of a workhouse shall, within seven days after the end of each half-year, insert in the proper columns, according to the form in Schedule B., numbered 19, called the parochial list and statement of account for every parish in the union, or, with the consent of the board of guardians, in a separate list containing similar columns, to be called the parochial list of in-door poor, the name of every pauper chargeable to every such parish during the previous half-year, together with the number of days each pauper has been maintained in the workhouse; and every relieving officer shall, within fourteen days after the end of each half-year, enter in the proper columns of the said parochial list for every parish in his district, or, with the consent of the board of guardians, in a separate list containing similar columns, to be called the parochial list of out-door poor, the name of every pauper contained in the out-door relief lists for the previous

half-year, together with the amounts of relief in money and in kind charged as given to each pauper.

Such parochial lists, when filled up by the master and relieving officers respectively, shall be delivered by them to the clerk, who shall examine the entries made therein, and shall certify to the accuracy thereof by his signature. The clerk shall also make out, in the form given at the foot of such parochial list, a complete statement of the account of each parish with the union, and shall sign the same.

*Art. 30.* The relieving officers of the union shall, within thirty days after the end of each half-year, under the direction of the board of guardians, or of the clerk, deliver a copy of each of such lists and statement for every parish in his district to the overseers thereof, who shall lay the same before the next vestry meeting, and preserve the same with the parish papers.

*Art. 31.* The guardians may, if they think fit, pay to each officer who has not been removed or suspended from his or her office, and who is entitled to receive from them payment of any salary, whether by way of annual stipend, poundage, or other emolument, on account of such salary, the amount which may be due at the expiration of every quarter, provided the accounts of such officer shall have been presented by him or her to the board of guardians duly made up. The guardians may, however, if they think fit, defer the payment of the salary of any officer until his or her accounts shall have been allowed by the auditor.

#### *Auditing of Accounts.*

*Art. 32.* Every auditor shall audit the accounts of all the unions in his district, and of the parishes comprised therein, once in every half-year; that is to say, as soon as may be after the 25th day of March and the 29th day of September, respectively. Provided always, that if the auditor shall see fit, in any special case, with the consent of the poor law commissioners, to hold an extraordinary audit, either of the whole or of any portion of the accounts of any union or parish, in addition to the ordinary audit, at any time between such two days, it shall be the duty of any person who would be or would have been accountable at the ordinary audit to account at such special audit in like form and manner as at such ordinary audit, so far as the same shall be applicable to such special audit; and the surcharge, allowance, disallowance, or decision of the auditor on any item or other matter, at such special audit, shall, so far as regards the provisions and regulations

which may be contained in any order of the poor law commissioners, have the same effect as if the same were made or given at the ordinary audit of the accounts of such union or parish.

*Art. 33.* The auditor shall give to the clerk to the guardians fourteen days' notice in writing of the time and place, on and at which he intends to commence the audit of the accounts of the union, and of the parishes therein.

*Art. 34.* The officers of the union, and of the parishes in the union, who by law are bound to account to such auditor, shall attend at the time and place appointed by him for the audit of their accounts, and shall submit to the auditor all books, documents, bills, and vouchers containing or relating to their accounts; and the same shall at the time of the audit be open to the inspection of any owner of property or ratepayer interested in such accounts, but to such extent and in such manner only as will not in the judgment of the said auditor interfere with the audit.

*Art. 35.* In auditing the accounts, the auditor shall see that they have been kept and are presented in proper form; that the particular items of receipt and expenditure are stated in detail, and that the payments are supported by adequate vouchers and authority; and he shall ascertain whether all sums received, or which ought to have been received, are brought into account; and he shall examine whether the expenditure is in all cases such as might lawfully be made; and he shall reduce such payments and charges as are exorbitant, and disallow and strike out such as are contrary to the orders, rules, and regulations of the poor law commissioners, or are not otherwise ordered by law.

*Art. 36.* The auditor shall examine and collate the several books and papers of account of the several accounting parties; and shall ascertain that the several entries correspond with and balance each other, where such balance may be required.

*Art. 37.* The auditor shall compute the said accounts so as to verify the arithmetical accuracy thereof, and the balance due to or from the officers rendering the same at the time of the audit; and he shall state the balance in words at length, and certify the same by his signature or initials, and add the date of the audit.

*Art. 38.* The auditor shall, at each audit, compare the balance sheet hereinbefore directed to be delivered to him by the overseers of every parish with the entries in the book of receipts and payments of the overseers; and having certified by his signature or initials at the foot of such balance sheet that it is in conformity with the said book, shall deliver such balance sheet to the clerk to the board of guardians, who shall

preserve it, together with the other balance sheets of the same half-year, with the books and papers of the guardians.

*Art. 39.* The auditor shall receive any objection made by a ratepayer or any person aggrieved against the accounts undergoing audit, or any item or charge therein, or any vouchers or authority for the same, and shall examine into the merits of such objection, and make a decision respecting the same.

*Art. 40.* If the auditor shall doubt the correctness of any account, or any item or charge in any account, he shall require the officer rendering the account, or any other person holding or accountable for any money, books, deeds, or chattels, relating to the poor rates or the relief of the poor, to appear before him, and shall call upon such person to produce any accounts, books, or papers which he may lawfully require; and he shall examine such officer or person, and accounts, books, and papers as may appear or be produced before him, respecting such account, item, or charge.

*Art. 41.* If the auditor find that any money, goods, or chattels belonging to the union, or any parish therein, have been purloined, embezzled, wasted, or misapplied, or that any deficiency or loss has been incurred by the negligence or misconduct of any officer or other person accounting, and shall surcharge such officer or person with such amount or value in his account, he shall submit a statement of such amount or value to the board of guardians as soon as he conveniently can do so.

*Art. 42.* The auditor having audited the several accounts in the ledger, shall sign a certificate at the foot of the balance sheet therein, to the following effect:—

“ I have examined the several accounts of which the foregoing is the balance sheet, and I have compared the several payments credited to the treasurer with the vouchers, and I hereby certify that the entries appear to be correct and legal. And that [when the balance in the treasurer’s book does not agree with the balance in the ledger], subject to the explanation below [the difference to be explained at the foot of the certificate], the balance of the treasurer’s account, viz., £—, agrees with the balance which by his own book appears to have been in his hands at the time of closing such account.

“ Dated —.

“ (Signed) —,

“ Auditor.”

And in the other books the auditor shall make a note or mark of his having audited the same.

*Art. 43.* The auditor shall at the close of each audit of the accounts of the unions in his district, transmit to the poor law

commissioners a statement, in the form numbered 38, Schedule E., of the books directed by this order to be kept by the union officers, showing which, if any, is not kept at all, or is imperfectly kept.

*Art. 44.* The auditor shall, at the close of the audit of the accounts of the unions in his district next after the 25th day of March in every year, transmit to the poor law commissioners a statement in the form numbered 39, Schedule E., setting forth the name of each union officer and collector of poor rates in his district required to give a bond, and whether such bond, together with any certificate or proof that each of the sureties named therein is living, and is not bankrupt or insolvent, was produced to him at such audit; and also, in the column headed "observations," stating any defects in such securities.

And the auditor shall, at the close of such audit of the accounts of each union, report to the board of guardians thereof the fact of such bonds and certificates having been produced to him, together with any defects in such securities.

*Art. 45.* The personal representatives of an officer accountable under this order dying before the half-yearly audit of his accounts, shall, so far as they may be by law required, account, in conformity with the provisions herein contained, in the place of such deceased officer; and all regulations affecting the accounts of such officer shall, so far as is otherwise lawful, affect the accounts of the personal representatives of such officer.

*Art. 46.* If any person, being clerk to a board of guardians, master of the workhouse, or collector appointed by the guardians, or relieving officer accountable under this order, shall resign his office or be removed therefrom before the audit of his accounts, such person shall lay before the board of guardians, at a time to be fixed by them, a true and complete account of all monies, matters, and things committed to the charge of, or collected, received, held, or distributed by such person on behalf of the union, or any parish therein, in such form as he would have had to produce them before the auditor at the end of the current half-year if he had so long continued in office; and shall deliver over all balances, books, papers, matters and things in his hands, to the board of guardians, or to the person whom they may appoint to receive the same, subject always to the liability of such person to account to the auditor at an audit, and without prejudice to the power of the auditor to allow or disallow the account of such person or any charge therein, or to surcharge him in respect of any charge to which he might be liable.

*Art. 47.* Every person voluntarily undertaking to fulfil either wholly or in part the duties of any officer affected by

this order, shall, so far as relates to the accounts prescribed by this order to be kept or presented by any such officer, keep and present such accounts in the same form and manner as any such officer is by this order directed to keep and present such accounts.

*Art. 48.* The clerk shall, at all reasonable times, at the request of any owner of property or ratepayer in the union, permit him to inspect the statements of the union or parish accounts for the twelve months prior to the last audit.

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### 3. OFFICERS OF THE WORKHOUSE.

*Chaplain, 377.*

*Master, 378.*

*Matron, 381.*

*Schoolmaster and school-*  
*mistress, 382.*

*Nurse, 383.*

*Porter, 383.*

*Superintendent of out-door*  
*labour, 384.*

#### *Chaplain of Workhouse.*

By the consolidated order, *Art. 171*, no person shall hold the office of chaplain under this order without the consent of the bishop of the diocese to his appointment, signified in writing. See also *ante*, pp. 337, 338.

*Art. 211.* The following shall be the duties of the chaplain:—

No. 1. To read prayers and preach a sermon to the paupers and other inmates of the workhouse on every Sunday, and on Good Friday and Christmas Day, unless the guardians, with the consent of the commissioners, may otherwise direct.

No. 2. To examine the children, and to catechise such as belong to the Church of England, at least once in every month, and to make a record of the same, and state the dates of his attendance, the general progress and condition of the children, and the moral and religious state of the inmates generally, in a book to be kept for that purpose, to be laid before the guardians at their next ordinary meeting, and to be termed "THE CHAPLAIN'S REPORT."

No. 3. To visit the sick paupers, and to administer religious consolation to them in the workhouse, at such periods as the guardians may appoint, and when applied to for that purpose by the master or matron.

The poor law board have an absolute discretion as to the



removal of the chaplain, and need not assign any reason for removing him. *Ex parte Molyneux*, 26 J. P. 56. And the chaplain does not require the consent of the incumbent of the parish in which the workhouse is. *Molyneux v. Bagshaw*, 27 J. P. 420.

*Master of Workhouse.*

By the same consolidated order, *Art.* 208, the following shall be the duties of the master :—

No. 1. To admit paupers into the workhouse, in obedience to the orders specified in *Art.* 88 (*ante*, p. 195), and also every person applying for admission who may appear to him to require relief through any sudden or urgent necessity, and to cause every pauper, upon admission, to be examined by the medical officer, as is directed in *Art.* 91 (*ante*, p. 196).

No. 2. To cause every male pauper above the age of seven years, upon admission, to be searched, cleansed, and clothed, and to be placed in the proper ward.

No. 3. To enforce industry, order, punctuality, and cleanliness, and the observance of all regulations for the government of the workhouse by the paupers, and by the several officers, assistants, and servants therein.

No. 4. To read prayers to the paupers before breakfast and after supper every day, or cause prayers to be read, according to *Art.* 124 (*ante*, p. 198).

No. 5. To cause the paupers to be inspected, and their names called over, in conformity with *Art.* 103, in order that it may be seen that each individual is clean and in a proper state.

No. 6. To provide for and enforce the employment of the able-bodied adult paupers, during the hours of labour; to assist in training the youths in such employment as will best fit them for gaining their own living; to keep the partially disabled paupers occupied to the extent of their ability; and to allow none who are capable of employment to be idle at any time.

No. 7. To visit the sleeping wards of the male paupers at eleven o'clock in the forenoon of every day, and see that such wards have been all duly cleansed and are properly ventilated.

No. 8. To see that the meals of the paupers are duly provided, dressed and served, according to the directions in *Arts.* 104 and 107, and to superintend the distribution of the food.

No. 9. To say, or cause to be said, grace before and after meals.

No. 10. To visit all the wards of the male paupers before nine o'clock every night in winter, and ten o'clock in summer, and see that all the male paupers are in bed, and that all fires and lights therein are extinguished, except so far as may be necessary for the sick.

No. 11. To receive from the porter the keys of the workhouse at nine o'clock every night, and to deliver them to him again at six o'clock every morning, or at such hours as shall from time to time be fixed by the guardians.

No. 12. To see that the male paupers are properly clothed, and that their clothes are kept in proper repair.

No. 13. To cause the birth of every child born in the workhouse to be registered by the registrar of births and deaths within the space of one week after such child shall have been born; and also to enter such birth in a register kept according to Form (S.)

No. 14. To send for the medical officer in case any pauper is taken ill or becomes insane, and to take care that all sick and insane paupers are duly visited by the medical officer, and are provided with such medicines and attendance, diet and other necessities, as the medical officer or the guardians direct, and to apprise the nearest relation in the workhouse of the sickness of any pauper, and, in the case of dangerous sickness to send for the chaplain, and any relative or friend of the pauper, resident within a reasonable distance, whom the pauper may desire to see.

No. 15. To take care that no pauper at the approach of death shall be left unattended either during the day or the night.

No. 16. To give immediate information of the death of any pauper in the workhouse to the medical officer, and to the nearest relations of the deceased who may be known to him, and who may reside within a reasonable distance; and if the body be not removed within a reasonable time, to provide for the interment thereof.

No. 17. When requisite, to cause the death of every pauper dying in the workhouse to be duly registered by the registrar of births and deaths within five days after the day of such death; and also to enter such death in a register kept according to Form (T.)

No. 18. To deliver an inventory of the clothes and other property of any pauper who may have died in the workhouse to the guardians at their next ordinary meeting.

No. 19. To keep such portion of the workhouse medical relief book prescribed in this order as is assigned to him in the Form marked (Q.), and to keep all books or accounts which he is, or hereafter may be, by any order of the commissioners, directed and required to keep, to allow the same

to be constantly open to the inspection of any of the guardians of the union, and to submit the same to the guardians at their ordinary meetings.

No. 20. To submit to the guardians, at every ordinary meeting, an estimate of such provisions and other articles as are required for the use of the workhouse, and to receive and execute the directions of the guardians thereupon.

No. 21. To receive all provisions and other articles purchased or procured for the use of the workhouse, and before placing them in store to examine and compare them with the bills of parcels or invoices severally relating thereto; and after having proved the accuracy of such bills or invoices, to authenticate the same with his signature, and submit them to the guardians at their next ordinary meeting.

No. 22. To receive and take charge of all provisions, clothing, linen, and other articles belonging to the workhouse, or confided to his care by the guardians, and issue the same to the matron or other persons as may be required.

No. 23. To report to the guardians from time to time the names of such children as the schoolmaster may recommend as fit to be put out to service, or other employment, and to take the necessary steps for carrying into effect the directions of the guardians thereon.

No. 24. To take care that the wards, rooms, larder, kitchen, and all other offices of the workhouse, and all the utensils and furniture thereof, be kept clean and in good order; and as often as any defect in the same, or in the state of the workhouse, shall occur, to report the same in writing to the guardians at their next ordinary meeting.

No. 25. To submit to the guardians, at every ordinary meeting, a report of the number of the inmates in the workhouse according to the Form (U.)

No. 26. To bring before the visiting committee or the guardians any pauper inmate desirous of making a complaint or application to the guardians.

No. 27. To report forthwith to the medical officer and to the guardians in writing, all cases in which any restraint or compulsion may have been used towards any pauper inmate of unsound mind in the workhouse.

No. 28. To keep a book, in which he shall enter all his written reports to the guardians or to the medical officer, and to lay the same before the guardians at every ordinary meeting.

No. 29. To inform the visiting committee and the guardians of the state of the workhouse in every department, and to report in writing to the guardians any negligence or other misconduct on the part of any of the subordinate officers, or servants of the establishment; and generally to observe and

fulfil all lawful orders and directions of the guardians suitable to his office.

*Art. 209.* The master shall not, except in case of necessity, purchase or procure any articles for the use of the workhouse, nor order any alterations or repairs of any part of the premises, or of the furniture or other articles belonging thereto, nor pay any monies on account of the workhouse, or of the union, without the authority of the guardians, nor apply any articles belonging to the guardians to purposes other than those authorized or approved of by such guardians.

*Matron of Workhouse.*

By the same consolidated order, *Art. 210*, the following shall be the duties of the matron:—

No. 1. In the absence of the master, or during his inability to act, to act as his substitute in the admission of paupers into the workhouse, according to Arts. 88 and 208, Nos. 1 and 2, and to cause every pauper upon such admission to be examined by the medical officer, as is directed in Art. 91.

No. 2. To cause the pauper children under the age of seven years, and the female paupers, to be searched, cleansed, and clothed upon their admission, and to be placed in their proper wards.

No. 3. To provide for and enforce the employment of the able-bodied female paupers during the hours of labour, and to keep the partially-disabled female paupers occupied to the extent of their ability, and to assist the schoolmistress in training up the children so as best to fit them for service.

No. 4. To call over the names of the paupers as is directed in Art. 103, to inspect their persons, and see that each individual is clean.

No. 5. To visit the sleeping wards of the female paupers at eleven o'clock in the forenoon of every day, and to see that such wards have been all duly cleansed, and are properly ventilated.

No. 6. To visit all the wards of the females and children every night before nine o'clock, and to ascertain that all the paupers in such wards are in bed, and all fires and lights not necessary for the sick or for women suckling their children therein extinguished.

No. 7. To pay particular attention to the moral conduct and orderly behaviour of the females and children, and to see that they are clean and decent in their dress and persons.

No. 8. To superintend and give the necessary directions for making and mending the linen and clothing supplied to the male paupers, and all the clothing supplied to the female

paupers and children, and to take care that all such clothing be properly numbered and marked on the inside with the name of the union.

No. 9. To see that every pauper in the workhouse has clean linen and stockings once a week, and that all the beds and bedding be kept in a clean and wholesome state.

No. 10. To take charge of the linen and stockings for the use of the paupers and the other linen in use in the workhouse, and to apply the same to such purposes as shall be authorized or approved of by the guardians, and to no other.

No. 11. To superintend and give the necessary directions concerning the washing, drying, and getting up of the linen, stockings, and blankets, and to see that the same be not dried in the sleeping wards, or in the sick wards.

No. 12. To take proper care of the children and sick paupers, and to provide the proper diet for the same, and for women suckling infants, and to furnish them with such changes of clothes and linen as may be necessary.

No. 13. To assist the master in the general management and superintendence of the workhouse, and especially in —

Enforcing the observance of good order, cleanliness, punctuality, industry, and decency of demeanor among the paupers;

Cleansing and ventilating the sleeping wards and the dining-hall, and all other parts of the premises;

Placing in store and taking charge of the provisions, clothing, linen, and other articles belonging to the union.

No. 14. When requested by the porter in pursuance of Art. 214, No. 5, to search any female entering or leaving the workhouse under the circumstances described in that article.

No. 15. To report to the master any negligence or other misconduct on the part of any of the female officers or servants of the establishment, or any case in which restraint or compulsion may have been used towards any female inmate of unsound mind.

No. 16. And generally to observe and fulfil all lawful orders and directions of the guardians suitable to her office.

#### *Workhouse Schoolmaster and Schoolmistress.*

By the same consolidated order, Art. 212, the following shall be the duties of the schoolmaster and schoolmistress:—

No. 1. To instruct the boys and girls according to the direction in Art. 114.

No. 2. To regulate the discipline and arrangements of the

school, and the industrial and moral training of the children, subject to the direction of the guardians.

No. 3. To accompany the children when they quit the workhouse for exercise, or for attendance at public worship, unless the guardians shall otherwise direct.

No. 4. To keep the children clean in their persons, and orderly and decorous in their conduct.

No. 5. To assist the master and matron respectively in maintaining due subordination in the workhouse.

*Nurse.*

By the same consolidated order, *Art.* 213, the following shall be the duties of a nurse for the workhouse:—

No. 1. To attend upon the sick in the sick and lying-in wards, and to administer to them all medicines and medical applications, according to the directions of the medical officer.

No. 2. To inform the medical officer of any defects which may be observed in the arrangements of the sick or lying-in ward.

No. 3. To take care that a light is kept at night in the sick ward.

*Workhouse Porter.*

By the same consolidated order, *Art.* 214, the following shall be the duties of the porter of the workhouse:—

No. 1. To keep the gate, and to prevent any person not being an officer of the workhouse, or of the union, an assistant poor law commissioner, or any person authorized by law, or by the commissioners, or guardians, from entering into or going out of the house without the leave of the master or matron.

No. 2. To keep a book in which he shall enter the name and business of every officer or other person who shall go into the workhouse, and the name of every officer or other person who shall go out thereof, together with the time of such officer's or person's going in or out.

No. 3. To receive all paupers who apply or present themselves for admission in conformity with *Art.* 88 (*ante*); and if the master and matron be both absent, to place such paupers in the receiving ward until the master or matron return.

No. 4. To examine all parcels and goods before they are received into the workhouse, and prevent the admission of any

spirituous or fermented liquors, or other articles contrary to any of the regulations contained in this order, or otherwise contrary to law.

No. 5. To search any male pauper entering or leaving the workhouse whom he may suspect of having possession of any spirits or other prohibited articles, and to require any other person entering the workhouse, whom he may suspect of having possession of any such spirits or prohibited articles, to satisfy him to the contrary before he permit such person to be admitted, and in the case of any female, to cause the matron to be called for the purpose of searching her, if necessary.

No. 6. To examine all parcels taken by any pauper out of the workhouse, and to prevent the undue removal of any article from the premises.

No. 7. To lock all the outer doors, and take the keys to the master, at nine o'clock every night, and to receive them back from him every morning at six o'clock, or at such hours as shall from time to time be fixed by the guardians; and if any application for admission to the workhouse be made after the keys shall have been so taken to the master, to apprise the master forthwith of such application.

No. 8. To assist the master and matron in preserving order, and in enforcing obedience and due subordination in the workhouse.

No. 9. To inform the master of all things affecting the security and order of the workhouse, and to obey all lawful directions of the master or matron, and of the guardians, suitable to his office.

*Superintendent of out-door labour.*] By the same consolidated order, Art. 217, the duties of a superintendent of out-door labour shall be to superintend any able-bodied paupers not inmates of the workhouse, who may be set to work by the guardians, to take care that they perform the work respectively assigned to them, and to report truly to the guardians respecting the performance of such work.

## PARISH CLERK.

The parish clerk is appointed by the parson, vicar, or other minister; Can. 91; or otherwise by custom. *Jermyn's case*, Cro. Jac. 670. He must be twenty years of age; Can. 91; and has his office for life; *Townsend v. Thorpe*, 2 L. Raym. 1507; 2 Str. 776; but he may be removed by the parson, &c., for sufficient cause; *R. v. Warren*, Cowp. 370. A verbal appointment by the rector is sufficient; *R. v. Bobbing*, 1 N. & P. 166. And a licensed curate acting during the suspension of the incumbent may make the appointment. *Pinder v. Burr*, 4 E. & B. 105. When the rector has the appointment, with the consent of the vestry, any one who dissents ought to do so at the time of the nomination. *R. v. St. Anne's*, 3 Burr. 1877. *R. v. Davie*, 6 A. & E. 374. After being appointed, he is usually licensed by the ordinary. 3 *Burn, Ecc. Law*, 67. 7 & 8 Vict. c. 59, s. 3.

By stat. 7 & 8 Vict. c. 59, s. 2, a person in holy orders, (deacon's or priest's orders,) may be elected church clerk, parish clerk, or chapel clerk. But he is in that case not to have a freehold office, and is removable like a stipendiary curate. *Id.* s. 5. At common law the party who appointed could remove him; but the clerk must have had a full opportunity of answering any charge made against him. *R. v. Smith*, 5 Q. B. 614. Under the 7 & 8 Vict. c. 59, s. 5, the ordinary is to hear the charge against him. Under some of the Church Building Acts, he is annually appointed by the minister; though other Acts say nothing on the subject.

*Salary.*] The majority of a vestry may pay the salary of the parish clerk out of the church rate. *Attenborough v. Kemp*, 30 L. T. 211; 25 J. P. 627. He is often entitled by custom to a reasonable allowance, and he may sue the churchwardens if they do not pay him. *Parker v. Clarke*, 3 Salk. 87. Under the Church Building Acts, he is paid out of the pew rents.

## SEXTON.

The sexton is sometimes chosen by the parish, though by custom the minister usually appoints. *R. v. Damerel*, 5 A. & E. 584. It depends a good deal on what are the usual duties who has the right to appoint. Where the duties of parish clerk and sexton are united, the appointment, *prim*



*facie*, belongs to the incumbent; but if separate, the presumption is that he and the churchwardens appoint jointly. *Causfield v. Blenkinsop*, 4 Exch. 234. A woman may competently fill the office, though in modern times one is never appointed. *Oliver v. Ingram*, 2 Str. 1114. The salary depends on custom, and is paid by the churchwardens. In practice the vestry generally settles his fees and remuneration. The business of the sexton is to keep the church clean and provided with all minor necessities under the direction of the churchwardens. The office is at common law considered freehold, and therefore it is difficult to remove him. *R. v. Kingsclere*, 2 Lev. 18. *He's case*, 1 Vent. 153. But there may be a valid custom for the inhabitants to remove him at pleasure. *R. v. Taunton*, 1 Cowp. 413. *R. v. Thame*, 1 Str. 115.

## VESTRIES.

This subject will be considered under the following heads:—

1. *Parish Vestries*, 387.
2. *Vestries appointed under stat. 1 & 2 Will. 4*, c. 60, 406.
3. *Select Vestries*, 419.
4. *Metropolitan Vestries*, 423.

### 1. PARISH VESTRIES.

*Statutes relating to Parish Vestries*, 388.

*Vestry Meetings*, 388.

*Their Power and Duties in respect of Highways*, 394.

*Their Power and Duties in other respects*, 398.

*Vestry Clerk*, 403.

A parish vestry is an assembly of the inhabitants of a parish, met together for the despatch of the affairs and business of the parish. 4 *Burn, Ecc. Law*, 8. It is the only legitimate organ through which the inhabitants express their resolutions. *White v. Steele*, 12 C. B. (N. S.) 383. The like assemblies may be holden of the inhabitants of a township, hamlet, or vill, separately maintaining its own poor; and although such an assembly cannot of course be termed a parish vestry, yet it has all the same power and authority with respect to the district for which it is holden, that a parish vestry possesses with respect to the parish, and is regulated in the same way. By stat. 58 Geo. 3, c. 69, which regulates parish vestries, it is provided by sect. 7, that all provisions, authorities, and directions in this Act contained, in relation to parishes, shall extend and be construed to extend to all townships, villis, and places having separate overseers of the poor, and maintaining their poor separately;—and that all the directions and regulations herein contained in regard to vestries, shall extend and be applied to all meetings which may by law be holden of the inhabitants of any parish, township, vill, or place for any of the purposes in this Act expressed;—and that the notices by this Act required to be given of every vestry may, in places in which there is or shall be no parish church or chapel, or where there shall not be divine service in such church or chapel, be given and published in such manner as

notices of the like nature shall have been there usually given and published, or as shall be most effectual for communicating the same to the inhabitants of every such parish, township, vill, or place respectively. 58 Geo. 3, c. 69, s. 7. This Act only extends to England and Wales; *Id.* s. 11; it does not extend to any parish in the city of London or borough of Southwark; *Id.* ss. 9, 10; and it must not be understood as at all affecting or altering the time of holding any vestry, parish, or town meeting, or the time of holding any vestry, parish, or town meeting, which is by the authority of any Act required to be holden on any certain day, or within any certain time in such an Act prescribed and directed; nor shall anything in this Act contained extend to take away, lessen, prejudice, or affect the powers of any vestry or meeting holden in any parish, township, or place, by virtue of any special Act or Acts, of any ancient and special usage or custom, or to change or affect the right or manner of voting in any vestry or meeting so holden. *Id.* s. 3.

A vestry is not liable for the negligence of its contractor in doing a lawful work ordered by it. *Holliday v. St. Leonard*, 11 C. B. (N. S.) 192.

#### *Statutes relating to Parish Vestries.*

58 Geo. 3, c. 69.	1 Vict. c. 45.
59 Geo. 3, c. 85.	13 & 14 Vict. c. 57.
1 & 2 Will. 4, c. 60.	16 & 17 Vict. c. 45.

(As to Metropolitan Vestries, 18 & 19 Vict. c. 120; 19 & 20 Vict. c. 112; 21 & 22 Vict. c. 104; 25 & 26 Vict. c. 102.)

#### *Meetings of Parish Vestries.*

<i>Notice of holding</i> , 388.	<i>Manner of voting</i> , 391.
<i>Where holden</i> , 389.	<i>Right to a poll</i> , 392.
<i>Chairman</i> , 389.	<i>Books, &amp;c., and how pre-</i>
<i>Whomay attend and vote</i> , 390	<i>served</i> , 392.

*Notice of holding.*] No vestry, or meeting of the inhabitants in vestry, of or for any parish, shall be holden, until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry. 58 Geo. 3, c. 69, s. 1. This notice was required to be given, by publishing it in the parish church or chapel on some Sunday, during or immediately after divine service, and by affixing a written or printed copy on the prin-

cipal door. *Id.* But this is repealed; and now, so far as relates to publishing it during or after divine service in the church, the notice being reduced into writing, copies of it in writing or in print, or partly in writing and partly in print, shall, previously to the commencement of divine service on the several days on which such notices have heretofore been given in the church or chapel of any parish or place, or at the door of any church or chapel, be affixed on or near to the doors of all the churches and chapels within such parish or place. 1 Vict. c. 45, ss. 1, 2. And such notice shall be previously signed by a churchwarden of the church or chapel,—or by the rector, vicar, or curate of such parish,—or by any overseer of the poor of such parish. *Id.* s. 3. The form of the notice will be not critically but reasonably construed. *Rand v. Green*, 9 C. B. N. S. 315.

*Where holden.*] From these meetings being holden in the vestry of the church, they derived their name of vestry meetings or vestries; and they have heretofore usually been holden in the vestry, or in the church itself. But as this, in large parishes, sometimes led to certain inconveniences, it was enacted by stat. 13 & 14 Vict. c. 57, s. 1, that upon the application of the churchwardens or overseers of any parish, containing a population of 2,000 persons according to the last preceding census, in pursuance of a resolution of the vestry of such parish, the poor law commissioners may make an order that this Act shall be put in force within the parish. And from and after the expiration of twelve calendar months from the making and publishing of any such order, no meeting of the inhabitants of the parish for the purpose of holding a vestry, or for any other purpose than that of divine worship, or some ecclesiastical or charitable object, or some other purpose approved by the bishop of the diocese, shall be holden in any parish church or chapel, or other consecrated church or chapel, nor in the chancel thereof, nor, except in case of urgency, and with the previous approval of the said commissioners, in the vestry room attached to such church or chapel, in any parish or place, named in such order. *Id.* s. 2. The Act then makes provisions for providing some other room or place within the parish for such meetings, and enables the churchwardens or overseers to hire or purchase the same, or take it upon lease, and to borrow money for the purpose if necessary. *Id.* ss. 3, 4, 5.

*Chairman.*] The minister of the parish, that is to say, the rector, vicar, or perpetual curate, if he be present, presides as chairman wherever the meeting is held. *Wilson v. Macmath*, 3 Phill. E. C. 87; 3 B. & Ald. 246, n. *R. v. Doyley*, 12 A.

& E. 139. 4 *Burn, Eco. Law*, 9. But by stat. 58 Geo. 3, c. 69, s. 2, in case the rector, vicar, or perpetual curate, shall not be present, the persons assembled in pursuance of the notice already mentioned, shall forthwith nominate and appoint, by plurality of votes to be ascertained as hereinafter directed, one of the inhabitants of such parish to be the chairman, and to preside at the meeting.

The chairman, and not the vestry, has the power of adjourning the meeting. *R. v. Dooley*, 12 A. & E. 139. But he must exercise the power so as to facilitate the business, else the court of Queen's Bench may interfere by *mandamus*. Where the meeting is adjourned no fresh notice of the particular business to be done is necessary. *Scadding v. Loran*, 3 H. L. C. 418.

*Who may attend and vote.*] None but persons rated to the relief of the poor of the parish shall be present at the meeting or vote. See 58 Geo. 3, c. 69, s. 3, *post*. And formerly the right was confined to inhabitants. But by stat. 59 Geo. 3, c. 85, s. 1, any person who shall be assessed and rated for the relief of the poor in respect of any annual rent, profit, or value arising from any lands, tenements, or hereditaments situate in any parish, in which any vestry shall be holden under the said recited Act, although such person shall not reside in or be an inhabitant of such parish, shall and may lawfully be present at such vestry, and such person shall have and be entitled to give such and so many vote or votes at such vestry, in respect of the amount of such rent, profit, or value, as by the said Act any inhabitant of such parish present at such vestry might or ought to have and be entitled to give in respect of such amount, and to all intents and purposes as if such person were an inhabitant of such parish. No person, however, who shall have refused or neglected to pay any rate for the relief of the poor (except a rate which shall have been made or become due within three calendar months immediately preceding such vestry meeting, 16 & 17 Vict. c. 45, s. 1), and shall have been demanded of him, shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same. 58 Geo. 3, c. 69, s. 5. 59 Geo. 3, c. 85, s. 3.

And a corporation, body politic or corporate, or company, rated, and the rate paid if demanded, whether rated in the name of such corporation or of any officer thereof, may be present and vote at such vestry by their clerk, secretary, steward, or other agent duly authorized for the purpose, as fully as any rated inhabitant of the parish. 59 Geo. 3, c. 85, s. 2.

And lastly, by stat. 58 Geo. 3, c. 69, s. 4, when any person shall have become an inhabitant of any parish, or become liable to be rated therein since the making of the last rate for the relief of the poor thereof, he shall be entitled to vote for and in respect of the lands, tenements, and property for which he shall have become liable to be rated, and shall consent to be rated, in like manner as if he should have been actually rated for the same.

*Manner of voting.*] By stat. 58 Geo. 3, c. 69, s. 3, it is enacted, that in all such vestries every inhabitant present, who shall, by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon or in respect of any annual rent, profit, or value not amounting to 50*l.*, shall have and be entitled to give one vote and no more; and every inhabitant there present, who shall in such last rate have been assessed or charged upon or in respect of any annual rent or rents, profit or value, amounting to 50*l.* or upwards (whether in one or in more than one sum or charge), shall have and be entitled to give one vote for every 25*l.* of annual rent, profit, and value upon or in respect of which he shall have been assessed or charged in such last rate, so nevertheless that no inhabitant shall be entitled to give more than six votes; and in cases where two or more of the inhabitants present shall be jointly rated, each of them shall be entitled to vote according to the proportion and amount which shall be borne by him of the joint charge; and where one only of the persons jointly rated shall attend, he shall be entitled to vote according to and in respect of the whole of the joint charge. Where a person is assessed to the poor-rate in his own right and also executor of another person, he may add the two amounts to make up the qualification. *R. v. Kirby*, 1 B. & S. 647. This mode of voting applies to all kinds of business done at vestries. *R. v. Clerkenwell*, 1 A. & E. 317.

In all cases of equality of votes upon any question arising in such vestry, the chairman, in addition to such vote or votes as he may by virtue of this Act be entitled to give in right of his assessment, shall have the casting vote. 58 Geo. 3, c. 69, s. 2.

If a statute says a particular act is to be done by a majority of those present, those who are actually present, though not voting, are to be counted. *R. v. Christ Church*, 7 E. & B. 409. *Re Eynsham*, 12 Q. B. 398, *n.*

If a vote is refused by the returning officer, no action lies against such officer unless he acted maliciously. *Tozer v. Child*, 7 E. & B. 377.

Where the Small Tenements Act, 13 & 14 Vict. c. 49, has

been adopted, and the owner is entitled to vote as owner of small tenements, and also as occupier of other tenements, he must combine his qualifications, and is not entitled to separate votes in respect of each kind of property. *Lambe v. Grieres*, 26 J. P. 327. And whatever be the number of small tenements held by one owner, he can never have more than six votes. *Richardson v. Gladwin*, E. B. & E. 138.

*Right to a poll.*] It is one of the incidents of holding a vestry that any vestryman present is entitled to demand a poll after the show of hands has been taken, and if this demand is not complied with, the resolution is void. This is a common law right and is implied in all statutes conferring the power of holding vestries, unless there are the clearest words taking away such right. *White v. Steele*, 11 C. B. N. S. 383. *R. v. How*, 27 J. P. 773. *Tear v. Freebody*, 4 C. B. N. S. 228. And the restriction of voting by ballot cannot at common law be imposed on the vestrymen. *Faulkner v. Elger*, 4 B. & C. 449. The chairman may at once direct a poll in case of plurality of candidates, without first taking a show of hands. *R. v. Rector of Birmingham*, 7 A. & E. 254. No resolution which confines the votes at the poll to those who were actually present at the meeting is legal. *R. v. St. Mary, Lambeth*, 8 A. & E. 356. *R. v. Inhabitants of Goole*, 25 J. P. 308; and the doors should be kept open while the poll is being taken. *Id.* In the preliminary show of hands one vote should only be allowed to each person, but if no poll is demanded, the voters may be taken in the same way as at a poll. The poll should be kept open a sufficient time to allow all the parishioners who choose to come to be able conveniently to do so. *Baker v. Wood*, 1 Curt. 507. *Campbell v. Maund*, 5 A. & E. 865. And a local disturbance is no good ground for closing the poll too early. *R. v. Graham*, 25 J. P. 437.

But where a *mandamus* is applied for to have a fresh poll, on account of improper rejection of votes or exclusion of voters by the poll being too soon closed, it must be shown that sufficient numbers were excluded to have turned the scale and altered the result. *Ex parte Mawby*, 3 C. & B. 918.

In putting the vote at the poll, care should be taken in putting the resolutions and amendments, to see that affirmative and negative votes are taken on each separately, unless there are only two conflicting propositions before the meeting. *Elt v. Burial Board of St. Mary*, 1 Kay, 449. *R. v. Justices of Surrey*, 27 J. P. 709.

*Books, &c., and how preserved.*] Minutes of the proceedings and resolutions of every vestry, shall be fairly and distinctly entered in a book to be provided for the purpose by

the churchwardens and overseers of the poor, and shall be signed by the chairman, and by such other of the persons present as shall think proper to sign the same. 58 Geo. 3, c. 69, s. 2.

And by the same statute, sect. 6, as well the books hereby directed to be provided and kept for the entry of the proceedings of vestries, as all former vestry books, and all rates and assessments, accounts, and vouchers of the churchwardens, overseers of the poor, and surveyors of the highways, and other parish officers, and all certificates, orders of courts and of justices, and other parish books, documents, writings, and public papers of every parish, except the registry of marriages, baptisms, and burials, shall be kept by such person and persons, and deposited in such place and manner, as the inhabitants in vestry assembled shall direct; and if any person in whose hands or custody any such book, rate, assessment, account, voucher, certificate, order, document, writing, or paper shall be, shall wilfully or negligently destroy, obliterate, or injure the same, or suffer the same to be destroyed, obliterated, or injured, or shall, after reasonable notice and demand, refuse or neglect to deliver the same to such person or persons, or to deposit the same in such place as shall be by the order of any such vestry be directed, every person so offending, and being lawfully convicted thereof on his own confession, or on the oath of one or more credible witness or witnesses, by and before two of His Majesty's justices of the peace, upon complaint thereof to them made, shall for every such offence forfeit and pay such sum not exceeding 50*l.*, nor less than 40*s.*, as shall by such justices be adjudged and determined; and the same shall be recovered and levied, by warrant of such justices, in such manner and by such ways and means as poor's rates in arrear are by law to be recovered and levied, and shall be paid to the overseers of the poor of the parish against which the offence shall be committed, or to some of them, and be applied for and towards the relief of the poor thereof: provided nevertheless, that every person who shall unlawfully retain in his custody, or shall refuse to deliver to any person or persons authorized to receive the same, or who shall obliterate, destroy, or injure, or suffer to be obliterated, destroyed, or injured, any book, rate, assessment, account, voucher, certificate, order, document, writing, or paper, belonging to any parish, or to the churchwardens, overseers of the poor, or surveyors of the highways thereof, may, in every such case, be proceeded against in any of His Majesty's courts, civilly or criminally, in like manner as if this Act had not been made. As to an office for parish books, see *ante*, p. 10.



*Their Powers and Duties in respect of Highways.**As to surveyors, 394.**As to collectors of highway rates, 394.**As to officers in large parishes, 394.**Stopping up or diverting highways, 394.**Consent to erecting direction posts, &c., 395.**Consent to materials being purchased, &c., 395.**Consent to a way repairable by individuals, &c., being made a parish road, 395.**Consent to a way dedicated to the public being a parish road, 395.*

*As to surveyors.*] The inhabitants of every parish, &c., maintaining its own highways, at their first meeting in vestry for the nomination of overseers of the poor in every year, shall proceed to the election of one or more persons to serve the office of surveyor in the said parish, &c., for the year then next ensuing; and in such case, notice of such election shall be given by the chairman to the person elected, and to the outgoing surveyor: provided always, that in any parish, &c., where there is no meeting in the year for the nomination of overseers of the poor, the inhabitants contributing to the highway rate shall meet at their usual place of public meeting upon the 25th of March, or within fourteen days afterwards, in every year, to elect one or more persons to serve the office of surveyors of highways for the said parish, &c. 5 & 6 Will. 4, c. 50, s. 6. See *ante*, p. 224.

*As to collectors of highway rates.*] The surveyor of the highways of any parish, by consent of the majority of the inhabitants in vestry, may appoint any number of collectors of the highway rates, taking security from them. 5 & 6 Will. 4, c. 50, ss. 36, 37. See *ante*, p. 106.

*As to officers in large parishes.*] In large parishes, where the population exceeds 5,000, the vestry, by a majority of at least two-thirds, may appoint a board for the purpose of superintending the highways in the parish, and of carrying the provisions of the Highway Act into effect. 5 & 6 Will. 4, c. 50, s. 18, *ante*, p. 225.

*Stopping up or diverting highways.*] When the inhabitants in vestry assembled shall deem it expedient that any highway should be stopped up, diverted or turned, either entirely, or reserving a bridleway or footway along the whole, or any part or parts thereof, the chairman of such meeting shall, by an order in writing, direct the surveyor to apply to

two justices to view the same, and shall authorize him to pay all the expenses attending such view, and the stopping up, diverting, or turning such highway, either entirely, or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act. 5 & 6 Will. 4, c. 50, s. 84. See as to the subsequent proceedings, *ante*, p. 240.

*Consent to erect direction posts, &c.*] The consent of the inhabitants in vestry must be obtained, before the surveyor of the highways can erect direction posts, boundary stones, &c. *Ante*, p. 245.

*Consent to materials being purchased, &c.*] In every parish, the surveyor may, with the consent of the inhabitants in vestry, contract for purchasing, getting, and carrying the materials required for the repair of the highways. 5 & 6 Will. 4, c. 50, s. 46, *ante*, p. 229.

*Consent to a way, repairable by individuals, &c., being made a parish road.*] Highways, repairable by individuals or corporations, may, by stat. 5 & 6 Will. 4, c. 50, s. 62, become parish roads; by which section it is enacted that any body politic or corporate, or any person liable to repair any highway by reason of tenure of any lands, or otherwise howsoever, or the surveyor of the parish in which the said highway is situate, may, if he or either party shall think proper, having first obtained the consent of the inhabitants in vestry assembled, apply to any justice for the purpose of making the said highway a parish highway, and to be repaired by the surveyor of the said parish; and the said justice is hereby authorized and required to issue his summons, requiring the said surveyor, or the party so liable to repair the said highway as aforesaid, to appear before the justices at the next special sessions for the highways, and if both parties appear, such justices may then proceed to determine the matter; but in case the surveyor or party summoned shall not appear on such first summons, or appearing shall require further time, such justices shall adjourn the further consideration of the matter to the next special sessions for the highways, of which the said surveyor or party not appearing shall have notice, on which day the justices so assembled at such special sessions shall proceed to hear the parties and their witnesses, and whether the surveyor or party summoned do or do not appear, shall proceed to examine and determine the matter; and in case they decide that the said highway shall become a parish highway, and be thereafter repaired by the surveyor of the said parish, they shall, by an order under their hands, fix the proportion of the expenses of repair.

ing the said highway to be annually paid by such body politic or corporate or person as aforesaid, to the surveyor of the said parish, and the order of the said justices shall be binding on the surveyor of the said parish, and the said body politic or corporate or person as aforesaid, their heirs, successors, and assigns: provided nevertheless that the said justices, instead of fixing the proportion of the expenses of repairing the said highway to be annually paid as aforesaid, may, by an order under their hands, fix a certain sum to be paid by such body politic or corporate or person as aforesaid, to the surveyor of the said parish, in full discharge of all claims thereafter in respect of the repairs of such highway; and in default of payment of such last-mentioned sum, or of such annual sum as aforesaid, the said surveyor may proceed for the recovery thereof, in the same manner as any penalties and forfeitures are recoverable under this Act: provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair of such highways, shall exceed the sum of 100*l.*, the said sum, when received, shall be vested in the name of the minister, churchwardens, and surveyors of the highways of the parish within which such highway shall be situate, in some public government securities, and the interests and dividends from time to time arising or accruing therefrom shall be applied towards the repairs of the highways within the said parish; but when the sum so fixed to be paid in full discharge of all claims as aforesaid, shall not exceed the sum of 100*l.*, the said last-mentioned sum, or any part thereof, on the application by and with the consent of the inhabitants of the parish in vestry assembled and of the justices in special sessions assembled, shall and may be paid to the surveyor of the said parish, to be applied towards the repair of the highways within the said parish. 5 & 6 Will. 4, c. 50, s. 62.

*Consent to a way dedicated to the public being a parish road.*] By stat. 5 & 6 Will. 4, c. 50, s. 23, no road or occupation way made or hereafter to be made by and at the expense of any individual or private person, body politic or corporate, nor any roads already set out or to be hereafter set out as a private driftway or horsepath in any award of commissioners under an Inclosure Act, shall be deemed or taken to be a highway which the inhabitants of any parish shall be compellable or liable to repair,—unless the person, &c., proposing to dedicate such highway to the use of the public, shall give three calendar months' previous notice in writing, to the surveyor of the parish, of his intention to dedicate such highway to the use of the public, describing its situation and extent, and shall have made the same in a substantial manner, and of

the width required by this Act, and to the satisfaction of the said surveyor and of any two justices of the peace of the division in which such highway is situate, in petty sessions assembled, who are hereby required, on receiving notice from such person or body politic or corporate, to view the same, and to certify that such highway has been made in a substantial manner, and of the width required by this Act, at the expense of the party requiring such view, which certificate shall be enrolled at the quarter sessions holden next after the granting thereof,—then and in such case, after the said highway shall have been used by the public, and duly repaired and kept in repair by the said person, body politic or corporate, for the space of twelve calendar months, such highway shall for ever thereafter be kept in repair by the parish in which it is situate: provided nevertheless, that on receipt of such notice as aforesaid, the surveyor of the said parish shall call a vestry meeting of the inhabitants of such parish, and if such vestry shall deem such highway not to be of sufficient utility to the inhabitants of the said parish, to justify its being kept in repair at the expense of the said parish, any one justice of the peace, on the application of the said surveyor, shall summon the party proposing to make the new highway to appear before the justices at the next special sessions for the highways to be held in and for the division in which the said intended highway shall be situate; and the question as to the utility as aforesaid of such highway shall be determined at the discretion of such justices.

There is an appeal from the justices' decision as to the utility of the proposed way. *R. v. Justices of Derbyshire*, E. B. & E. 69.

*Their Power and Duty in other respects.**In directing Landlords to be rated for Small Tenements, 398.**In appointing Churchwardens, 401.**In voting for Church Rate, 401.**In nominating and electing Assistant Overseers, 401.**In directing Workhouses to be built, &c., 402.**In providing Land to employ the Poor, 402.**In making out Lists of Persons for Constables, 402.**In adopting Baths and Washhouses Act, 403.**Power and Duty of Vestry, in directing Landlords to be rated for Small Tenements.**In what cases, 398.**How rated, 399.**Rates how recovered, 399.**Rights and privileges of owners and occupiers, 400.*

*In what cases.*] By stat. 13 & 14 Vict. c. 99, s. 1, it shall be lawful for the vestry of any parish, from time to time and at all times hereafter, to declare and order that the owners of tenements in such parish, the yearly rateable value whereof shall not exceed 6*l.*, shall be rated and assessed to the rates for the relief of the poor in respect of such tenements, instead of the occupiers thereof, and the order so made shall remain in force until rescinded in the manner hereinafter authorized.

But it shall be lawful for the vestry of the said parish, by a majority of two-thirds at least of the votes of the persons present at a meeting duly called for that purpose pursuant to notice, as hereinafter mentioned, and competent to vote thereat, at any time after the expiration of two years from the time when any such order shall have been so made, to order that from and after a day to be fixed by such vestry, not being less than three years from the date of such original order, such order shall cease and be rescinded, in which case, from and after such last-mentioned day, the said order shall be rescinded and no longer in force: provided nevertheless, that the provisions in this Act contained shall remain and continue in force for the purpose of collecting and recovering any rate which may have been previously made in pursuance of such order; provided also, that notice for calling every such meeting as aforesaid shall be by writing, signed by four ratepayers of the

parish, affixed on the principal outer door of the parish church or chapel of the parish, or on the usual place of affixing notices relating to the affairs of the parish, at some time not less than thirty or more than forty days previous to such meeting. *Id.* s. 2.

*How rated.]* Whilst any such order as firstly hereinbefore mentioned is in force, the respective owners of such tenements shall be rated and assessed (instead of the occupiers thereof) to the rates for the relief of the poor and to the rates for the repairs of the highways, which otherwise such occupiers might by law be rated to. *Id.* s. 3. And for tenements, the yearly rateable value whereof shall not exceed 6*l.*, they shall be assessed to the rates for the relief of the poor, and to the rates for the repairs of the highways, in respect of such tenements, at three-fourths of the amount at which such tenement would be liable to be rated in case this Act had not passed; and further, that whilst such order as firstly hereinbefore mentioned is in force, if any owner of one or more such tenements shall be desirous of paying a rate for one year in respect of all such tenements in any parish, whether such tenements be occupied or unoccupied, and shall give notice in writing of such his desire to the overseers of the poor, and the surveyors of the highways within one calendar month after the passing of this Act, or in any subsequent year within fourteen days next after the twenty-fifth day of March in that year, then and in such case such owner shall be assessed to the rates for the relief of the poor, and to the rates for the repair of the highways, in respect of such tenement or tenements respectively, whether the same be occupied or unoccupied, from thenceforth till the twenty-fifth day of March following, at a sum not being less than one-half of the amount at which such tenement or tenements respectively would be liable to be rated, if occupied, in case this Act had not passed. *Id.* s. 4.

*Rates how recovered.]* The rates to be assessed as aforesaid, together with the costs and charges of levying and recovering the same, may be levied on the goods of and recovered from the respective owners of such tenements as aforesaid by distress, action, suit, or other proceeding, in the same way as such rates, if lawfully assessed on the occupiers of such tenements, might by law be levied on the goods of or recovered from such occupiers; and, further, the goods and chattels of the occupiers of such tenements shall be liable to be distrained and sold for payment of such of the said rates as shall accrue due during their respective occupations, in the same way as if such rates were assessed on such occupiers. *Id.* s. 5.

*Rights and privilege of owners and occupiers.*] Every such owner so rated as aforesaid shall have the same right of appeal (subject to the same conditions) against rates, and the same rights to vote in vestry, as if he were an occupier duly rated in respect of the same tenement. *Id.* s. 6. As to votes in vestry, see *ante*, p. 391.

And such owners paying such rates in respect of tenements continuing to be held by occupiers under now existing tenancies for a greater term than from year to year, shall be entitled to add what they shall so pay to the rent payable in respect of such tenements, and have the same remedies for recovering the same as for rent in arrear; and that occupiers, other than such as shall continue to hold under now existing tenancies for a greater term than from year to year, may (whether paying such rates voluntarily or by compulsion) deduct the respective amount so to be answered by them as aforesaid, together with all costs and charges they may have incurred on account thereof, from the rent payable in respect of such tenements, and such amount shall be deemed debts due from such owners to such occupiers, and be recoverable by action. *Id.* s. 8.

Where the owner of such tenement shall be rated to the relief of the poor by virtue of this Act instead of the occupier thereof, and such owner shall have paid all money due on account of any rate or rates in respect of such tenement, such occupier shall be entitled to all municipal privileges and franchises to which by virtue of stat. 5 & 6 Will. 4, c. 76, he would have been entitled if he himself had been rated, and had paid such rate or rates; and if such owner so rated as aforesaid shall not have paid such rate or rates, it shall be lawful for such occupier to tender to the overseers of the poor, or other person authorized by law to receive the same, the amount of any rate or rates then due from such owner in respect of such tenement, and such overseer or other person so authorized as aforesaid shall be bound to receive the same; and such occupier shall, on the payment or tender of such amount, be entitled to exercise all such privileges and franchises as hereinbefore mentioned: provided always, that any occupier so paying any rate or rates in respect of any tenement where the owner is rated to the same, shall be entitled to deduct and retain the amount so paid by him from the next payment of rent to be made by him to such owner, or to recover the same from such owner, as money paid to and for the use of such owner. *Id.* s. 7.

The 14 & 15 Vict. c. 39, s. 1, preserves to the occupier of a small tenement rated to the landlord the parliamentary franchise arising from rating and payment of rates. There is, however, no such preservation of the right of the occupier to vote in vestry or for guardians of the poor.

*Power and Duty of Vestry, in appointing Churchwardens.*

This subject we have already fully considered, *ante*, p. 39. The churchwardens are appointed either by the minister and the parish vestry jointly, or, if they cannot agree, the minister then shall choose one, and the vestry the other. *Can.* 89. But by custom there may be more than two, and differently chosen from the manner here mentioned. *Ante*, p. 41.

*Power and Duty of Vestry to vote for Church rate.*

What repairs and expenses of the church the vestry are bound by law to provide for, and what not, have been already noticed, *ante*, p. 50. The effect of a majority of the parishioners, at a vestry meeting for the purpose, has also been considered, *ante*, p. 51.

*Their Authority to nominate and elect Assistant Overseers of the Poor.*

The inhabitants of any parish in vestry assembled [or of any township, village, or place, having separate overseers of the poor, and maintaining their poor separately], in a meeting of the inhabitants thereof holden after due and legal notice, may nominate and elect any discreet person or persons to be assistant overseer or overseers of the poor of such parish, &c., and determine and specify the duties to be by him or them executed and performed, and fix such yearly salary for the execution of the said office, as shall by such inhabitants be thought fit. 59 Geo. 3, c. 12, s. 7. Two justices then by their warrant appoint the party, so nominated and elected, to be assistant overseer. *Id.* See *ante*, p. 335.

And where a collector of poor rates shall be appointed under any order of the poor law board, the inhabitants in vestry assembled of any parish situated within the district for which any such collector acts, may appoint such collector to discharge all the duties of overseer of the poor, in addition to those of collector of the poor rates for such parish, and in the same manner as if he were appointed thereto as an assistant overseer, under the provisions of stat. 59 Geo. 3, c. 12, above mentioned. 7 & 8 Vict. c. 101, s. 61. See *ante*, p. 109.



*Their Authority as to Workhouses.*

The inhabitants of a parish in vestry assembled, may direct the churchwardens and overseers of the poor to erect and build in such parish a suitable workhouse, or to alter and enlarge any messuage or tenement belonging to such parish for that purpose, and to purchase or take on lease any ground within the parish for the purpose of such building, or for enlarging any such other messuage or tenement belonging to such parish for that purpose; or such churchwardens and overseers may and they are hereby authorized to add to and enlarge any such insufficient workhouse, as the inhabitants of the parish in vestry shall think fit and direct. 59 Geo. 3, c. 12, s. 8. They may direct insufficient workhouses to be sold. *Id.* s. 9. And where no sufficient workhouse can be procured in the parish, they may, with the consent of two justices, direct houses or buildings suitable for the purpose, in any adjoining parish, to be purchased or hired; *Id.* s. 10; and which then shall be deemed and taken to be part of their parish. *Id.* s. 11. All this, however, must be done under the control, and subject to the rules, orders, and regulations of the poor law board. 4 & 5 Will. 4, c. 76, s. 21.

*Their Authority to provide Land to employ the Poor.*

The inhabitants of a parish in vestry assembled, may consent to the churchwardens and overseers in using the parish lands, or in purchasing or hiring other lands, for the purpose of employing the poor in its cultivation; 59 Geo. 3, c. 12, s. 12; or in letting portions of it to the poor; *Id.* s. 13; under the control and subject to the rules, orders and regulations of the poor law board; 4 & 5 Will. 4, c. 76, s. 21; 5 & 6 Will. 4, c. 69, s. 4; or to hiring an office for parish books, *ante*, p. 11.

*Duty of Vestry to make out Lists of Persons to serve as Constables.*

The overseers of every parish, [township, &c.] upon the receipt of such precept, shall summon a meeting of the inhabitants in vestry to be holden within fourteen days after the receipt of the said precept; and the vestry at such meeting shall make out a list in writing of such number as shall be named in the precept of men residing within their parish, &c., who shall be qualified and liable to serve as constables, with

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the christian name and surname, and with the true place of abode, the title, quality, calling, or business of each, written at full length: provided also, that it shall be lawful for the vestry to annex to the said return the names of any number of men willing to serve the office of constable, and whom the vestry will recommend to be appointed, although not having the qualification hereinafter mentioned. 5 & 6 Vict. c. 109, s. 3., *ante*, p. 112. The vestry is bound to make out the list, and has no discretion to refuse. *R. v. N. Brierley*, 3 B. & E. 519.

*Power to adopt the Baths and Washhouses Act.*

On the requisition of ten ratepayers a vestry may be convened to determine whether the Baths and Washhouses Act shall be adopted for the parish. See *ante*, p. 31.

*Vestry Clerk.*

*How elected*, 403.

*His duties*, 404.

*His salary*, 406.

Before the passing of stat. 13 & 14 Vict. c. 57, the office of vestry clerk was not a permanent situation, but the majority of the inhabitants present at any meeting might appoint whom they pleased as their clerk, and might continue to employ him at subsequent meetings, if they would, and remunerate him if they thought fit. The law upon the subject was in a very uncertain and unsatisfactory state. But now, by the above statute, 13 & 14 Vict. c. 57, s. 1, in every parish [or place having separate overseers of the poor, and maintaining its own poor, sect. 10,] where the population exceeds 2,000 persons, according to the last preceding census, the poor law commissioners, if an application be made to them by the churchwardens, in pursuance of a resolution of the vestry, may make an order that the said Act, or part of it, shall be applied to and put in force within the parish. And then the vestry clerk may be appointed, and his office and duties regulated, under that Act, in the following manner.

*How elected.*] The churchwardens or other persons to whom it belongs to convene meetings of the vestry in any such parish shall, within the space of one calendar month from and after the making and publishing of any order of the commissioners so applied for, if such order extend to the appointment of vestry clerk as aforesaid, and also, in case of any subsequent vacancy in the office of vestry clerk, within one calendar month next after such vacancy, convene a meeting of the vestry of any

parish named in such order, for the special purpose of electing a vestry clerk, to perform such of the duties hereinafter mentioned as shall be applicable to such parish, in addition to those which are or may be imposed upon vestry clerks by any Act or Acts of parliament; and public notice of such vestry, and the place of holding the same, and the special purpose thereof, shall be given, in the usual manner in which notice of the meetings of the vestry is now given, at least seven days before the day to be appointed for holding such vestry; and at such meeting the vestry shall proceed to elect some fit and competent person to be vestry clerk, and the person so elected shall not be removable from office except by a resolution passed at a vestry to be called for that special purpose in the manner hereinbefore mentioned, and with the consent of the said commissioners for administering the laws for the relief of the poor in England, or by an order under the seal of the said commissioners. 13 & 14 Vict. c. 57, s. 6.

*His duties.*] It shall be the duty of such vestry clerk, unless otherwise directed by the poor law commissioners,—

To give notice of and attend the meetings of vestry and committees appointed thereat :

To summon and attend meetings of the churchwardens and overseers, when required, and to enter the minutes thereof respectively :

To keep the account of all charity monies which the churchwardens or overseers are authorized or are accustomed to distribute :

To keep the vestry books, and the parish deeds and documents, and the rate books and accounts which are closed, and to give copies of and extracts from the same to any person entitled thereto, such person paying for the same at the rate of 4*d.* for every seventy-two words or figures, and to permit any person or persons rated to the relief of the poor of the said parish, at all reasonable times, to inspect the same or any of them, on pain of dismissal for neglecting to give such copies or permit such inspection :

To make out, when required by the vestry, the church rate, and procure the same to be signed and completed, and to retain the custody thereof, and, where there is no collector of poor rates or assistant overseer, to make out the poor rate, and procure the same to be allowed, and to make all the subsequent entries in the rate books, and to give the notices thereof required by law :

To prepare and issue the necessary process for recovering arrears of such rates respectively before the justices,

and procure the summons to be served, and to attend the justices thereon, and advise the churchwardens and overseers as to the recovery of such arrears :

To keep and make out the accounts of the churchwardens, and to present such accounts to the vestry or other legal authority, to be passed, and to examine the church rate, collectors' accounts and returns of arrears :

To assist the overseers in making out their accounts (when-ever required by them), and, subject to the rules and regulations of the commissioners for administering the laws for the relief of the poor, to examine from time to time the accounts of the assistant overseers or collectors of poor rates, and their returns of arrears :

To attend the audit of accounts of the overseers, and conduct all correspondence arising therefrom :

To assist the churchwardens or overseers in preparing and making out all other parochial assessments and accounts, and in examining the accounts of the collectors of such assessments :

To ascertain and make out the list of persons liable to serve on juries, and to cause them to be printed and duly published, and returned to the justices :

To give the notices for claims to vote for members of parliament, and to make out lists of voters, and get the same printed and published, and duly returned, according to law, and to attend the court for revising them, and to prepare, make out, and publish the Burgess lists and the lists of constables :

To make all returns required of the churchwardens or of the overseers by law or proper authority :

To advise the churchwardens and overseers in all the duties of their office ; and also to perform such other duties and services of a like nature as the said commissioners for administering the laws for the relief of the poor in England, from time to time, at the request of the churchwardens or overseers of any such parish, or otherwise, shall prescribe and direct to be performed by such vestry clerk. *Id.* s. 7.

But nothing herein contained shall exempt or discharge, or be construed to exempt or discharge, any churchwarden or overseer of the poor from the performance of any duty required of him by law, nor oblige him to avail himself of the assistance of any vestry clerk to be appointed as aforesaid in the performance of his duties, unless he shall think fit so to do. *Id.* s. 9.

Where a vestry clerk was appointed to collect and apply the church rate, and he applied part of it to a wrong purpose, the churchwardens were held disentitled to sue him,

because they had sanctioned his act. *Cooper v. Law*, 6 C. B. N. S. 502.

*His salary.*] The amount of salary or other remuneration to be paid to the vestry clerk, as well as the days and times on which and the persons by whom the same shall be payable, shall be fixed by the said commissioners, and altered from time to time as there shall be occasion; and such salary or remuneration shall be chargeable upon and paid out of the monies to be raised for the relief of the poor for any such parish: and, where the said commissioners shall deem requisite, such vestry clerk shall give such security, and to such persons, as the said commissioners shall by their order under seal direct: provided always, that where, under the provisions of any local Act or Acts of parliament, any person or persons shall be paid for the performance of any of the duties of vestry clerk, or for assisting in the performance of any of the duties of churchwardens or overseers of the poor, nothing herein contained respecting the duties of the vestry clerk shall apply to or be deemed to apply to the performance of such duties while the same are so performed, or while payment shall be made for the performance of them as aforesaid. *Id.* s. 8.

## 2. VESTRY AND AUDITORS APPOINTED UNDER STAT. 1 & 2 WILL. 4, c. 60.

*Adoption of the Act*, 408.

*Election of Vestrymen and Auditors*, 410.

*The Vestrymen*, 418.

*The Auditors*, 417.

### *Adoption of the Act.*

*Requisition to the churchwardens*, 407.

*Notice by the churchwardens*, 407.

*Voting, how*, 408.

*Result declared*, 408.

By stat. 1 & 2 Will. 4, c. 60, s. 1, that Act may be adopted by any parish [liberty, precinct, township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own

poor, sect. 41] in England or Wales, [where the number of persons rated as householders, and having paid the rates for the relief of the poor within the year preceding that in which the provisions of this Act may be desired to be put in execution within such parish, &c., shall exceed 800, sect. 43,]—in manner following:—

*Requisition to the churchwardens.*] When in any parish certain of the ratepayers thereof may desire that the said parish should come under the operation of this Act, then and in that case any number of ratepayers amounting at least to one-fifth of the ratepayers of such parish, or any number of ratepayers amounting at least to fifty parishioners, may, on some day between the first day of December and the first day of March, deliver a requisition by them signed, and describing their places of residence, to the churchwardens, or to one of them, serving for the said parish, requiring of the said churchwardens to ascertain, according to the manner hereinafter mentioned, whether or not a majority of the ratepayers of the said parish do wish and require that this Act and the provisions thereof should be adopted therein. Which requisition may be in the form, or to the tenor and effect following, that is to say:—

*To the churchwardens of the parish of* [insert here the name of the parish].

*We, whose names are hereunto subscribed, being ratepayers resident in the said parish, and respectively rated or assessed to the relief of the poor thereof, do hereby require you the said churchwardens to ascertain and determine the adoption or non-adoption of an Act of the second year of the reign of King William the Fourth, chapter —, intituled, An Act [here insert the title of the Act].*

*Dated this — day of —, in the year of our Lord —.*

*Notice by the churchwardens.*] And the said churchwardens of the said parish shall on the first Sunday in the month of March next after the receipt of such requisition, affix or cause to be affixed a notice to the principal doors of every church and chapel within the said parish, specifying some day not earlier than ten days and not later than twenty-one days after such Sunday, and at what place or places within the said parish, the ratepayers are required to signify their votes for or against the adoption of this Act; which votes shall be received on three successive days, commencing at eight of the clock in the forenoon, and ending at four of the clock in the

afternoon of each day. 1 & 2 Will. 4, c. 60, s. 3. And the said notice shall be to the following effect:—

*The churchwardens of this parish* [insert here the name of the parish] *having received a requisition duly signed according to the provisions of an Act of the second year of the reign of William the Fourth, chapter —, for the better regulation of vestries, the ratepayers of this parish of* [insert here the name of the parish] *are hereby required, all and each of them, on the — day of — next, and the two following days, to signify to the said churchwardens by a declaration, either printed or written, or partly printed or partly written, addressed and delivered to one of the churchwardens at —, [insert here the place] their votes for or against the adoption of the aforesaid Act for the better regulation of vestries by the ratepayers of this parish.*

(Signed) —, Churchwardens.

*Voting, how.*] The ratepayers then vote by delivering a declaration to the churchwardens, as above mentioned, the form of which declaration, as given in sect 4, is thus:—

*I, A. B., of — street [or — place or house] in this parish of —, vote [for or against, as the case may be,] the adoption of the Act of the second year of the reign of William the Fourth, chapter one, for the better regulation of vestries by this parish.*

But no person shall be deemed a ratepayer, or be entitled to vote, or do any other act, matter, or thing as such under the provisions of this Act, unless he or she shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such ratepayer, and shall have paid all the parochial rates, taxes, and assessments due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such acting. 1 & 2 Will. 4, c. 60, s. 7.

*Result declared.*] The churchwardens shall carefully examine the votes to them delivered as aforesaid, and shall compare them with the last rate made for the relief of the poor of the said parish, and shall be empowered to call before them and examine any parish officer touching the said votes, or any ratepayer so giving his vote, and after a full and fair summing-up of the said votes shall, by public notice according to the form and manner hereinafter prescribed, declare whether or not two-thirds of the votes given have been given in favour

of the adoption of the said Act: provided always, that the whole number of persons voting shall be a clear majority of the ratepayers of the parish: provided also, that the adoption or non-adoption of this Act shall be decided by such number of votes as aforesaid. 1 & 2 Will. 4, c. 60, s. 5.

And notice of the adoption of this Act by any parish shall be forthwith given by the churchwardens for the time being of the said parish, in the London Gazette and in one or more of the public newspapers circulating in the county in which the said parish may be situated, and by affixing a notice of the same to the principal doors of every church and chapel within the said parish. 1 & 2 Will. 4, c. 60, s. 8. Which notice shall be to the following effect:—

*Parish of* [here insert name of parish].

*Notice is hereby given, that the above-named parish has adopted the Act of the second year of the reign of King William the Fourth, chapter —, intituled An Act [here insert the title of the Act]; and that the numbers of the majority and minority of votes given for and against the adoption of the said Act are as follows; that is to say, — votes for the adoption thereof, and — votes against the adoption thereof.*

*Dated this — day of —, in the year of our Lord —.*  
*(Signed) —, Churchwardens.*

If the ratepayers shall determine, in the manner as aforesaid, against the adoption of this Act, then and in that case it shall not be lawful to make another requisition for the same purpose within three years after such determination. 1 & 2 Will. 4, c. 60, s. 9.

But in any parish in which public notice of the adoption of this Act in the manner as aforesaid shall be so made and given, this Act shall immediately become the law for electing vestrymen and auditors of accounts of the said parish in manner hereinafter mentioned. *Id.* s. 10.

Provided always, that any of the ratepayers of the aforesaid parish, not exceeding five together, may inspect at or in the vestry room, or in some convenient place within the same parish, and they are hereby empowered to inspect the votes so given for and against the adoption of this Act, at all seasonable times within one month after such notice shall have been given; and the churchwardens of the said parish are hereby required carefully to preserve the said votes, and freely to permit and allow the examination thereof by the aforesaid



ratepayers of the said parish at such seasonable times within the period aforesaid. *Id.* s. 6.

And if any churchwarden, rate collector, overseer, or other parish officer shall refuse to call meetings according to the provisions of this Act, or shall refuse or neglect to make and give the declarations and notices directed to be made and given by this Act, or to receive the vote of any ratepayer as aforesaid, or shall in any manner whatsoever alter, falsify, conceal, or suppress any vote or votes as aforesaid, such churchwarden, rate collector, overseer, or other parish officer shall be deemed and taken to be guilty of a misdemeanor *Id.* s. 11.

*Election of Vestrymen and Auditors.*

<p><i>When, and notice of it, 410.</i>  <i>How, 411.</i></p>	<p><i>In what cases and how, by ballot, 411.</i>  <i>Result published, 412.</i></p>
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*When, and notice of it.*] In all parishes, &c., adopting this Act, the meeting of the parishioners for the election of vestrymen and auditors of accounts by the parishioners, shall take place in the month of May in every year. 1 & 2 Will. 4, c. 60, s. 22. And the day on which such election shall commence shall in the first instance be appointed by the churchwardens, but in every subsequent year by the vestry. *Id.*

And on some Sunday, at least twenty-one days previously to the day of annual election of vestrymen, notice of election, pursuant to this Act, signed by the churchwardens, shall be affixed to the principal doors of every church and chapel of the said parish, and at other usual places, in the following terms:— (1 & 2 Will. 4, c. 60, s. 12.)

*Parish of* [here insert name of parish].

*The parishioners duly qualified according to the provisions of the Act of the second year of the reign of King William the Fourth, intituled An Act* [here insert the title of the Act], *are hereby required to meet at —, on the — day of —, conformably to the provisions of the said Act, and then and there to consider of and elect fit and proper persons to be vestrymen and auditors of accounts of the parish of —, for the ensuing year, that is to say,*

—, *Members of the vestry.*  
 —, *Auditors of accounts.*

And the churchwardens may summon the rate collectors to attend them on the said day of annual election, in order to assist them in ascertaining that the persons presenting themselves to vote as parishioners are rated to the relief of the poor of the said parish, and duly qualified to vote at the said election. 1 & 2 Will. 4, c. 60, s. 13.

*How.*] On the day of annual election for vestrymen and auditors in any parish adopting this Act, each parishioner then rated, and having been rated to the relief of the poor one year, desirous of voting, shall meet at the place appointed for such election, then and there to nominate eight ratepayers of the said parish as fit and proper persons to be inspectors of votes, four of such eight to be nominated by the churchwardens, and the other four to be nominated by the meeting; and after such nomination the said parishioners shall elect such parishioners duly qualified as may be there proposed for the offices of vestrymen and auditors; and the chairman shall at such meeting declare the names of the parishioners who have been elected by a majority of votes at such meeting. 1 & 2 Will. 4, c. 60, s. 14.

*In what cases and how, by ballot.*] Any five ratepayers may then and there, in writing or otherwise, demand a poll, which shall be taken by ballot, each ratepayer delivering to the aforesaid inspectors two folded papers, one of which papers shall contain the names of the persons for whom such parishioner may vote as fit and proper to be members of the vestry, and the other shall contain the names of the persons for whom such parishioner may vote as fit and proper to be auditors of accounts: provided always, that each ratepayer shall have one vote and no more for the members of the vestry, and one vote and no more for the auditors of accounts to be chosen in the said parish. 1 & 2 Will. 4, c. 60, s. 15. And when a ballot is thus demanded, it shall commence on the following day and continue for three successive days, commencing at eight o'clock in the forenoon, and closing at four o'clock in the afternoon, on each day. *Id.* s. 22.

The inspectors of votes shall deposit the said folded lists without previously opening the same, in two separate sets of balloting glasses or boxes, one set for the vestry lists, and another for the auditors' lists; and the said balloting glasses or boxes shall be closed at the time fixed for the termination of the voting, that is, at four of the clock of the afternoon of the last day of election. *Id.* s. 16.

And after the close of the said ballot, the aforesaid inspectors shall proceed to examine the said votes, and if necessary shall continue the examination by adjournments from day to

day, not exceeding four days, Sunday excepted, until they shall have decided upon the persons duly qualified according to the provisions of this Act who may have been chosen to fill the aforesaid offices. *Id.* s. 17.

And if an equality of votes should appear to the aforesaid inspectors to be given for any two or more persons to fill any or either of the said offices, in that case the inspectors shall decide by lot upon the person or persons so to be chosen. *Id.* s. 18.

And if any person shall forge or in any way falsify any name or writing in any paper or list purporting to contain the vote or votes of any parishioner as aforesaid so voting for vestrymen or auditors,—or do by any contrivance attempt to obstruct or prevent the purposes of such mode of election,—the persons so offending shall, upon information laid, and conviction before any two or more justices of the peace having jurisdiction in the parish so adopting this Act, be liable to a penalty of not less than 10*l.* and not more than 50*l.*, and in default of payment thereof shall be imprisoned for a term not exceeding six nor less than three months; and any fine so levied shall be given, half to the informer who shall have informed against the person so offending, and the other half to the poor of the parish in which the said offence shall have been committed. *Id.* s. 19.

When by reason of the populousness of any parish the said parish shall have been or shall be divided into districts for ecclesiastical or other purposes, then and in that case the said votes shall be taken according to the aforesaid mode of election, in some convenient place, at the discretion of the churchwardens, in each of the several districts of the said parish. *Id.* s. 22.

*Result published.*] The inspectors shall, immediately after they shall have decided upon whom the aforesaid elections have fallen, deliver to the churchwardens, or to one of them, a list of the persons chosen by the parishioners to act as vestrymen and auditors of accounts; and the said list, or a copy thereof, shall be affixed to the doors of the churches and chapels or other places chosen for the purposes of public notice in the said parish. *Id.* s. 20.

And if any inspector as aforesaid shall wilfully make or cause to be made an incorrect return of the said votes, every such offender shall, upon information laid by any person before two or more justices of the peace having jurisdiction in the said parish, and upon conviction for such offence, be liable to a penalty of not less than 25*l.* and not exceeding 50*l.* *Id.* s. 21.

*The Vestrymen.*

*Their number, 413.*

*How changed, 413.*

*Their qualification, 414.*

*Their powers, privileges, and duties, 414.*

*Their meetings, 415.*

*Their number.*] In all parishes adopting this Act, the vestry appointed and elected as hereinbefore mentioned shall, when the said Act shall come into full effect, consist of a certain number of resident householders: that is to say, twelve vestrymen for every parish in which the number of rated householders shall not exceed one thousand; twenty-four vestrymen for every parish in which the rated householders shall exceed one thousand; thirty-six vestrymen for every parish in which the number of rated householders shall exceed two thousand; and so on at the proportion of twelve additional vestrymen for every thousand rated householders:—provided always, that in no case the number of vestrymen shall exceed one hundred and twenty:—provided also, that in any parish wherein a greater number of vestrymen are given by special Act of parliament than the proportions aforesaid will amount to, that then the number of vestrymen shall remain the same as given by such Act of parliament;—and provided, that the rector, district rector, vicar, perpetual curate, and churchwardens of the said parish shall constitute a part of the said vestry, and shall vote therein, in addition to the vestrymen as aforesaid elected under this Act; but no more than one such rector or other such minister as aforesaid, from any one parish or ecclesiastical district as aforesaid, shall *ex officio* be a part of or vote at any vestry meeting. 1 & 2 Will. 4, c. 60, s. 23.

*How changed.*] At the first election for vestrymen after the adoption of this Act in any parish, one-third of the then existing vestry, or the nearest number thereto, but not exceeding the same, shall retire from office, (such portion to be determined by lot,) and the parishioners duly qualified shall elect a number of vestrymen equal to one-third of the vestry, to be chosen according to the provisions of this Act; and that on the next ensuing annual election for vestrymen one-half, or as nearly as may be one-half, of the remaining part of the first aforesaid vestry, shall retire from office (such portion to be determined by lot), and the parishioners duly qualified shall again elect a number of vestrymen equal to one-third of the vestry, to be chosen according to the provisions of this Act; and that on the next, that is to say, the third annual

election for vestrymen, the last remaining portion of the vestry as aforesaid shall retire from office, and the parishioners duly qualified shall elect vestrymen in like manner and number as at the two preceding elections, so as to fill up the vestry to the exact number of vestrymen prescribed by this Act. *Id.* s. 24.

And at every subsequent annual election, those vestrymen who have been three years in office shall go out of office, and the parishioners shall elect, according to the provisions of this Act, other vestrymen, to the number of one-third of the total number of which such vestry shall consist, as also fill up any vacancies which may have occurred from death or other causes: provided always, that any or all of the vestrymen so going out by rotation may be immediately eligible for re-election. *Id.* s. 25.

*Their qualification.]* The vestry elected under this Act in any parish not within the metropolitan police district or the city of London, shall consist of resident householders rated or assessed to the relief of the poor upon a rental of not less than 10*l.*; and no person shall be capable of acting as one of the said vestry, unless he shall be the occupier of a house, lands, tenements, or hereditaments rated or assessed upon the afore-mentioned amount of rental within the parish for which he is to serve: provided always, that if the parish adopting this Act should be within the metropolitan police district or the city of London, or if the resident householders therein should amount to more than three thousand, then and in that case, the vestry elected under this Act shall consist of resident householders rated or assessed to the relief of the poor of such parish upon a rental of not less than 40*l.* per annum. *Id.* s. 26.

*Their powers, privileges, and duties.]* From and after the adoption of this Act in any parish, the vestry shall exercise the powers and privileges held by any vestry now existing in such parish, and the authority of such vestry may be pleaded before any justice or justices of the peace, or in any court of law, in regard to all parochial property, or monies due, or holdings or contracts, or other documents of the like nature, formerly under the control or in the keeping of the said vestry of the said parish; and all parish officers or boards shall account to them in like manner as they have accounted to the said vestry: provided always, that nothing in this Act shall be deemed, construed, or taken to repeal, alter, or invalidate any local Act for the government of any parish by vestries, or for the management of the poor by any board of directors and guardians, or for the due provision for divine

worship within the parish, and the maintenance of the clergy officiating therein, otherwise than is by this Act expressly enacted regarding the election of vestrymen and auditors of accounts. *Id.* s. 27.

And all powers or duties to be performed by the vestry of any parish adopting this Act may be exercised and performed respectively by the major part of such vestry assembled at any meeting, there not being less than five vestrymen present at a meeting of a vestry which consists of twelve or more elected vestrymen and not exceeding twenty-three, and not being less than seven vestrymen present at the meeting of a vestry which consists of twenty-four or more elected vestrymen and not exceeding thirty-five, and not being less than nine vestrymen present at a meeting of a vestry which consists of thirty-six elected vestrymen or upwards; and all orders and directions given, and all contracts and engagements entered into, by the vestrymen present at any such meeting, or the major part of them then assembled, shall be as valid and effectual as if the same were done by all the said vestrymen for the time being, and shall be binding and conclusive on all such vestrymen, provided that the same is confirmed at the next subsequent meeting of the vestry. *Id.* s. 28.

And in any parish adopting this Act, the vestry shall cause to be made out, once at least in every year, a list of the several freehold, copyhold, and leasehold estates, and of all charitable foundations and bequests, if any, belonging to the said parish, and under the control of the said vestry, the said list to contain a true and detailed account of the place where such estate or charitable foundation may be situate, or in what mode and security such bequest may be invested, specifying also the yearly rental of each, and the particular appropriation thereof, together with the names of the persons partaking of their benefit (except where such benefit shall be allotted to the poor of the parish generally), and to what amount in each case, and also stating the name and description of the persons in whom such estates are vested, and the names and descriptions of the trustees for each charity: provided always, that the aforesaid list shall be open for the inspection of the ratepayers, at the office of the vestry clerk, at the same time with the accounts when audited, according to the provisions of this Act. *Id.* s. 39.

*Their meetings, &c.]* In any case in which the vestry-room of any parish in any city or town shall not be sufficiently large and commodious for any vestry meeting, such meeting shall be held elsewhere within the said parish or place, but not in the church or chapel thereof. *Id.* s. 29.

And at every meeting of any vestry, in the absence of the

persons authorised by law or custom to take the chair, the members present shall elect a chairman for the occasion, before proceeding to other business. *Id.* s. 30.

And the vestry of every parish adopting this Act, shall cause to be provided and kept a proper book or books, and proper entries to be made therein of the names of the several vestrymen who shall attend the respective meetings of the vestry, and of all orders and proceedings made or taken at such meetings; and all such books shall at all reasonable times be open to the inspection of the said vestrymen, and of any person rated or assessed to the relief of the poor of the said parish, and of any creditor on the rates of the said parish, without fee or reward; and the said vestrymen, persons, and creditors, or any of them, shall and may take copies of or extracts from such books respectively, without paying anything for the same; and in case the clerk to the said vestry, or other person having the care of such books, shall refuse to permit, or shall not permit the said vestrymen or such persons or creditors to inspect the same, or to take such copies or extracts as aforesaid, such clerk or other person shall forfeit and pay any sum of money not exceeding 10*l.* for every such offence. *Id.* s. 31.

Also, the said vestry shall and they are hereby required to cause a book or books to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and disbursed for or on account of parochial purposes, and of the several articles, matters, and things for which such sums of money shall have been so received and disbursed; which book or books shall at all seasonable times be open to the inspection of the said vestrymen, and of any person or persons rated to the relief of the poor of the said parish, and of any creditor or creditors on the same, without fee or reward; and the said vestrymen and persons and creditors as aforesaid, or any of them, shall and may take copies of or extracts from the said book or books, or any part or parts thereof, without paying anything for the same: and in case the clerk to the said vestrymen, or other person with whom such books shall remain, shall on any reasonable demand refuse to permit or shall not permit the said vestrymen, persons, or creditors, or any of them, to inspect the said book or books, or to take such copies or extracts as aforesaid, such clerk or other person as aforesaid shall forfeit and pay any sum not exceeding 10*l.* for every such offence. *Id.* s. 32.

*The Auditors.*

*Their number and qualification, 417.*

*Abstract of the accounts to be published, 418.*

*Mode of audit, 417.*

*Their number and qualification.]* In every parish adopting this Act, the parishioners duly qualified to vote for vestrymen as aforesaid shall elect five ratepayers of the said parish, who shall have signified in writing their assent to serve to be auditors of accounts, which auditors shall be so elected on the first day on which the vestrymen shall be chosen after such parish shall have adopted this Act, and according to the same forms of voting as are hereinbefore prescribed for the election of the said vestry : provided always, that no person shall be eligible to fill the said office of auditor of accounts, who shall not be qualified according to the provisions of this Act, as hereinbefore stated, to fill the office of vestryman for the said parish ; and provided always, that no person shall be eligible to fill the said office of auditor of accounts, who shall be one of the vestry for the said parish ; and if any person on the day of annual election shall be chosen to be both a member of the vestry and an auditor of accounts, the said vestry at their first meeting after such election shall declare the said person incapable of acting as vestryman ; provided also, that no person shall be eligible to fill the said office of auditor of accounts, who shall be interested, either directly or indirectly, in any contract, office, business, or employ, or in providing or supplying any materials or articles for the parish for which he is to serve ; and any person who shall be discovered, after his election, to be so interested, shall cease to be an auditor. 1 & 2 Will. 4, c. 60, s. 83.

*Mode of audit.]* The said auditors of accounts shall meet twice at least in each year, at the board-room of the vestry, and (a majority of the said auditors being present at such meetings) shall proceed to audit the accounts of the said vestry for the preceding half-year, in presence of the vestry clerk ; and the said vestry are hereby required, by their said clerk, to produce and lay before the said auditors at every such meeting a true and just statement or account in writing, accompanied with proper vouchers, of all sums of money which may have come to the hands of the said vestry or of their treasurer, and also of all monies paid, laid out, or expended by them, or by any churchwardens, overseers, surveyors, or other persons by them employed, and responsible to the said vestry, since the last period up to which the accounts of the said vestry were audited : and in all parishes in which other boards shall have



control over any part of the parochial expenditure, the said auditors shall have the same power of examining the accounts and officers thereof as of examining the accounts and officers of the vestry, and shall audit the accounts of the said boards in the same manner as they audit the accounts of the said vestries. *Id.* s. 34.

And the said auditors shall have power to summon and call before them, by a writing for that purpose, signed by any one of them, or by the clerk of the vestry of any parish adopting this Act, any parish officer or other person or persons whatsoever concerned in the said accounts, and to require of him or her or them to attend the said auditors at any meeting or adjourned meeting, and to bring with them all books of accounts, writings, papers, and documents required, which may concern the said accounts, and to give such information as to the particulars of such accounts, as he, she, or they shall be enabled to give; and any parish officer or other person refusing so to attend, or otherwise wilfully obstructing the purposes of such inquiry, shall be deemed guilty of a misdemeanor. *Id.* s. 35.

And the said accounts, when audited and approved by the auditors, or by the major part of them, shall be by them signed in the presence of the clerk of the aforesaid vestry, and the said clerk of the vestry shall also affix his signature to the same; and it shall be lawful for the said auditors to subjoin such remarks thereto as to them shall seem meet. *Id.* s. 36.

The said accounts, when so audited and signed, shall remain at the office of the clerk of the said vestry; and the said accounts shall after such audit be open and accessible for the examination, at all seasonable times, of any person rated to the relief of the poor of the said parish, and of any creditor on the rates thereof: provided always, that nothing in this Act contained relative to the appointment and duty of auditors shall debar the parishioners from any remedy by them before possessed by the law of the land. *Id.* s. 37.

*Abstract of the accounts to be published.*] And an abstract of the accounts of all monies received and disbursed by the vestry in any parish adopting this Act, shall twice in every year, within fourteen days after the same shall have been audited in manner in this Act mentioned, be made out by the said vestry, either in writing or in print, and a copy of such abstract shall be delivered to all persons applying for the same, and rated or assessed to the relief of the poor of the said parish, such person paying 1s. for the same; and which copies the said clerk is hereby required to cause to be published either in writing or print, and distributed accordingly. *Id.* s. 38.

## 3. SELECT VESTRY

<i>How and for what purpose constituted, 419. Their appointment, 420.</i>	<i>Their meetings, 420. Their duty in relieving the poor, 420.</i>
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*How and for what purpose constituted.*] For the better and more effectual execution of the laws for the relief of the poor, and for the amendment thereof, it is enacted that it shall be lawful for the inhabitants of any parish in vestry assembled, and they are hereby empowered, to establish a select vestry for the concerns of the poor of such parish, and to that end to nominate and elect in the same or in any subsequent vestry, or any adjournment thereof respectively, such and so many substantial householders or occupiers within such parish, not exceeding the number of twenty nor less than five, as shall in any such vestry be thought fit to be members of the select vestry; and the rector, vicar, or other minister of the parish, and in his absence the curate thereof (such curate being resident in and charged to the poor rates of such parish), and the churchwardens and overseers of the poor for the time being, together with the inhabitants who shall be nominated and elected as aforesaid (such inhabitants being first thereto appointed by writing under the hand and seal of one of his Majesty's justices of the peace, which appointment he is hereby authorized and required to make), shall be and constitute a select vestry for the care and management of the concerns of the poor of such parish; and any three of them (two of whom shall neither be churchwardens nor overseers of the poor) shall be a quorum; and when any inhabitant elected and appointed to serve in any such select vestry shall, before the expiration of his office, die, or remove from the parish, or shall become incapable of serving, or shall refuse or neglect to serve therein, the vacancy which shall be thereby occasioned shall, as soon as conveniently may be, be filled up by the election and appointment in manner aforesaid of some other substantial householder or occupier of such parish, and so from time to time as often as any such vacancy shall occur; and every such select vestry shall continue and be empowered to act from the time of the appointment thereof until fourteen days after the next annual appointment of overseers of the poor of the parish shall take place, and may be from year to year, and in any future year, renewed in the manner hereinbefore directed. 59 Geo. 3, c. 12, s. 1. But nothing in this Act shall extend to

alter, affect, or disturb any select vestry, which in any parish has been established and has acted by virtue of any ancient usage or custom. *Id.* s. 36. If, however, such ancient select vestry have not all the powers required to be exercised under this Act, as shall presently be mentioned, a select vestry may be elected and appointed under this Act, to perform the functions which such ancient vestry cannot. *R. v. St. Bartholomew the Great*, 2 B. & Ad. 506. *R. v. St. Martin's-in-the-Fields*, 3 *id.* 907. And such ancient vestry cannot nominate or elect the select vestry under this Act, as the Act gives that power to the inhabitants in vestry, and not to any select portion of them. *R. v. Woodman et al.*, 4 B. & A. 504. Ten days' public notice of holding a vestry for the purpose above mentioned, shall be given by the churchwardens and overseers. 59 Geo. 3, c. 12, s. 4.

And all the powers, provisions, and clauses in this Act contained, which relate to vestries, or to the inhabitants of any parish in vestry assembled, shall be construed to extend to all meetings of the inhabitants of any township, vill, or place having separate overseers of the poor, and maintaining its poor separately, to be held after due and legal notice, for carrying into execution the laws for the relief of the poor, as fully as if in every such provision and clause they were severally and respectively named and repeated. *Id.* s. 25.

By several local Acts, also, the poor of particular parishes have been placed under the management of select vestries. The powers of select vestries in the metropolis are transferred to the new vestry, appointed under the Metropolis Local Management Acts. *R. v. Rendle*, 1 B. & S. 54. *Vaughan v. Imrie*, 28 L. J. 177, Q. B.

*Their appointment.*] It will be perceived from the first section of the stat. 59 Geo. 3, c. 12, *supra*, that the persons so nominated and elected as members of the select vestry, must also be "appointed by writing under the hand and seal of one of His Majesty's justices of the peace, which appointment he is hereby authorized and empowered to make;" 59 Geo. 3, c. 12, s. 1; and he cannot reject any of them, from any idea he may entertain of their insufficiency, or that they already hold offices incompatible with that of a select vestryman. *R. v. J.J. of Kent*, 4 Nev. & M. 299. As to the form of the appointment, see *Arch. P. L.* 388.

*Their meetings.*] Every such select vestry shall meet once in every fourteen days, and oftener if it shall be found necessary, in the parish church, or in some other convenient place within the parish; and at every such meeting a chairman shall be appointed by the majority of the members present,

who shall preside therein, and in all cases of equality of votes upon any question there arising the chairman shall have the casting vote. 59 Geo. 3, c. 12, s. 1.

And they shall cause minutes to be fairly entered in books, to be for that purpose provided, of all their meetings, proceedings, resolutions, orders, and transactions, and of all sums received, applied, and expended by their direction; and such minutes shall from time to time be signed by the chairman; and shall, together with a summary or report of the accounts and transactions of the select vestry, be laid before the inhabitants of the parish in general vestry assembled twice in every year, that is to say, in the month of March and the month of October, and at such other times as the select vestry shall think fit; and the minutes, proceedings, accounts, and reports of every select vestry shall belong to the parish, and be preserved with the other books, documents, accounts, and public papers thereof. *Id.* s. 3. Ten days' public notice must be given of the holding of such parish vestry, for the purpose of receiving the report of the select vestry, as above mentioned. *Id.* s. 4.

*Their duty in relieving the poor.*] The select vestry is empowered and required to examine into the state and condition of the poor of the parish, and to inquire into and determine upon the proper objects of relief, and the nature and the amount of the relief to be given; and in each case shall take into consideration the character and conduct of the poor person to be relieved, and shall be at liberty to distinguish, in the relief to be granted, between the deserving, and the idle, extravagant, or profligate poor; and such select vestry shall make orders in writing for such relief as they shall think requisite, and shall inquire into and superintend the collection and administration of all money to be raised by the poor's rates, and of all other funds and money raised or applied by the parish to the relief of the poor; and where any such select vestry shall be established, the overseers of the poor are required, in the execution of their office, to conform to the directions of the select vestry, and shall not, (except in cases of sudden emergency or urgent necessity, and to the extent only of such temporary relief as each case shall require,) give any further or other relief or allowance to the poor than such as shall be ordered by the select vestry. *Id.* s. 1.

The latter part of this section is re-enacted in substance by stat. 4 & 5 Will. 4, c. 76, s. 54, by which it is enacted that the ordering, giving, and directing of all relief to the poor of any parish, which shall be under the government and control of any select vestry, shall appertain and belong exclusively to such select vestry, according to the respective provisions of the

Acts under which such select vestry may have been or shall be appointed; and it shall not be lawful for any overseers of the poor to give any further or other relief or allowance from the poor rate, than such as shall be ordered by such select vestry, except in cases of sudden and urgent necessity, in which cases, we have seen, (*ante*, p. 295,) he may give, and a justice of the peace may order him to give such temporary relief as each case shall require, in articles of absolute necessity, but not in money, or medical relief where any case of sudden and dangerous illness may require it. *See this section at length, ante*, pp. 294, 295.

And by the same statute, 4 & 5 Will. 4, c. 76, s. 15, the poor law board are authorized and required from time to time, as they shall see occasion, to make and issue all such rules, orders, and regulations for the guidance and control of vestries, "so far as relates to the management and relief of the poor, and the keeping, examining, auditing, and allowing of accounts, and making and entering into contracts in all matters relating to such management or relief, or to any expenditure for the relief of the poor, and for carrying this Act into execution in all other respects, as they shall think proper."

Select vestries relieve the poor of their respective parishes, in or out of the workhouse, in the same manner as guardians, subject of course to the orders of the poor law board upon the subject. And they supersede the powers of a common vestry as regards the poor law. *Clarke v. King*, 2 Y. & J. 525.

They may order the relief to be granted by way of loan. 59 Geo. 3, c. 12, s. 29. *See Arch. P. L.* 363, &c.

#### 4. METROPOLITAN VESTRIES.

<i>Numbers of vestrymen in parishes, 423.</i>	<i>Proceedings at elections of vestrymen, 432.</i>
<i>Large parishes to be divided into wards, 429.</i>	<i>Forging of voting papers, 433.</i>
<i>Qualification of vestrymen, 430.</i>	<i>Lists of vestrymen to be published, 434.</i>
<i>Term of office, 430.</i>	<i>Places for elections, 434.</i>
<i>Appointment of auditors, 431.</i>	<i>Voters at elections, 434.</i>
<i>Notice of elections, 431.</i>	<i>Vestry meetings, 435.</i>
	<i>Powers of vestries, 436.</i>

The metropolitan vestries are now regulated by distinct statutes, viz., Metropolis Local Management Acts, 18 & 19 Vict. c. 120; 19 & 20 Vict. c. 112; 21 & 22 Vict. c. 104; and 25 & 26 Vict. c. 102.

*Numbers of vestrymen in metropolitan parishes.]* The Act of the session holden in the first and second years of King William the Fourth, chapter sixty, "For the better Regulation of Vestries, and for the Appointment of Auditors of Accounts in certain Parishes of England and Wales," shall be repealed, from and after the passing of this Act, so far as regards any parish mentioned in either of the schedules (A.) and (B.) to this Act: provided always, that the vestry and auditors already elected for any such parish under the said Act shall continue to be such vestry and auditors until the first election of vestrymen and auditors for such parish under this Act has taken place, but no longer; and the provisions of the said Act of King William the Fourth shall continue applicable to every such vestry and to their proceedings, and the books in which the same are entered, and to such auditors and their proceedings accordingly. 18 & 19 Vict. c. 120, s. 1.

The vestry in every parish mentioned in either of the schedules (A.) and (B.) to this Act shall consist of a certain number of persons qualified and elected as herein provided; (that is to say,) eighteen vestrymen for every parish in which the number of rated householders shall not exceed one thousand; and six additional vestrymen, that is, twenty-four vestrymen for every parish in which the number of rated householders shall exceed one thousand; and twelve additional vestrymen, that is, thirty-six vestrymen, for every parish in which the number of rated householders shall exceed two thousand; and so on at the proportion of twelve additional vestrymen for every thousand rated householders: Provided always, that in no case

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SCHEDULE (B.)

PARISHES UNITED INTO DISTRICTS FOR THE PURPOSES OF  
THE ACT.

PART I.

*Districts each electing One Member of the Metropolitan  
Board of Works.*

Name of District.	Parishes.	Number of Members to be elected to District Board.
Whitechapel district	Saint Mary, Whitechapel -	27
	Christchurch, Spitalfields -	12
	Saint Botolph, without Ald- gate, in the county of Mid- dlesex - - - -	6
	Holy Trinity, Minories -	1
	Saint Katherine, Precinct of Mile End New Town, Ham- let of - - - -	1
	Liberty of Norton Folgate -	6
	Old Artillery Ground -	3
	Tower, district of - -	1
	TOTAL - -	58
Westminster district	Saint Margaret - - -	30
	Saint John the Evangelist -	27
	TOTAL - -	57
Greenwich district	Saint Paul, Deptford, includ- ing Hatcham - - -	21
	Saint Nicholas, Deptford -	6
	Greenwich - - - -	30
	TOTAL - -	57



*Vestries (Metropolitan).*

Name of District.	Parishes.	Number of Members to be elected to District Board.
Wandsworth district	Clapham - - - -	18
	Tooting Graveney - -	3
	Streatham - - - -	9
	Saint Mary, Battersea, excluding Penge - -	12
	Wandsworth - - - -	9
	Putney, including Roehampton	6
	TOTAL - - - -	57
Hackney district	Hackney - - - -	51
	Saint Mary, Stoke Newington - - - -	6
	TOTAL - - - -	57
Saint Giles district	Saint Giles in the Fields -	27
	Saint George, Bloomsbury -	21
	TOTAL - - - -	48
Holborn district	Saint Andrew, Holborn above Bars - - - -	24
	Saint George the Martyr -	9
	Saint Sepulchre, in the county of Middlesex - - - -	6
	Saffron Hill, Hatton Garden, Ely Rents, and Ely Place	9
	The Liberty of Glasshouse Yard - - - -	1
	TOTAL - - - -	49

Name of District.	Parishes.	Number of Members to be elected to District Board.
Strand district	Saint Anne, Soho - -	18
	Saint Paul, Covent Garden - -	9
	Saint John the Baptist, Savoy, or Precinct of the Savoy - -	1
	Saint Mary-le-Strand - -	3
	Saint Clement Danes - -	15
	Liberty of the Rolls - -	3
	TOTAL - -	49
Fulham district	Saint Peter and Saint Paul, Hammersmith - -	24
	Fulham - -	15
	TOTAL - -	39
Limehouse district	Saint Anne, Limehouse - -	15
	Saint John, Wapping - -	3
	Saint Paul, Shadwell - -	6
	Ratcliffe, Hamlet of - -	12
	TOTAL - -	36
Poplar district	All Saints, Poplar - -	24
	Saint Mary, Stratford-le-Bow - -	9
	Saint Leonard, Bromley - -	15
	TOTAL - -	48
Saint Saviour's district	Christchurch - -	15
	Saint Saviour (including the Liberty of the Clink) - -	24
	TOTAL - -	39

## PART II.

*Districts united for electing One Member of the Metropolitan Board of Works.*

Name of District.	Parishes.	Number of Members to be elected to District Board.
Plumstead district united with	Charlton next Woolwich -	9
	Plumstead - - - -	12
	Eltham - - - -	6
	Lee - - - -	9
	Kidbrooke - - - -	1
	TOTAL - -	37
Lewisham district	Lewisham, including Sydenham Chapelry - -	24
	Hamlet of Penge - -	3
	TOTAL - -	27

## PART III.

*Parish and District united for electing One Member of the Metropolitan Board of Works.*

The parish of Rotherhithe united with Saint Olave district	Saint Olave - - -	12
	Saint Thomas, Southwark -	1
	Saint John, Horsleydown -	15
	TOTAL - -	28

*Large parishes to be divided into wards.*] Each of the said parishes which at the time of the passing of this Act contains more than 2,000 rated householders shall be divided into wards; and it shall be lawful for such person or persons as may be appointed for this purpose as herein provided to determine and set out, on or before the 10th day of October next, the number, extent, limits, and boundary lines of such wards, but so nevertheless that no ward shall contain less than 500 rated householders, and that the whole number of wards in any parish shall not exceed eight; and the person or persons setting out such wards in any such parish shall apportion among the several wards the number of vestrymen to be elected for such parish, and shall, in assigning the number of vestrymen to each ward, have regard, as far as in his or their judgment it is practicable, as well to the number of persons rated to the relief of the poor in each ward as to the aggregate amount of the sums at which all such persons are rated; and the number of vestrymen assigned to each ward shall be a number divisible by three; and a copy of the particulars of such division and apportionment shall be forthwith transmitted to one of Her Majesty's principal secretaries of state, and also to the vestry clerk of the parish to which such division and apportionment relate; and if Her Majesty, by the advice of her privy council, approve of such division and apportionment, the particulars thereof shall be published in the London Gazette; and the parish shall, after such publication, be deemed to be divided into such wards so determined and set out, and such division shall continue and be in force until the same be altered as herein provided; and the number of vestrymen assigned to each ward shall be the number to be elected for such ward until altered as aforesaid: Provided always, that if Her Majesty, by advice of her privy council, do not approve such division and apportionment, such publication as aforesaid shall nevertheless be made, and such division and apportionment be in force for the purpose of any election under the provisions of this Act, until such time as Her Majesty, by advice of her privy council, upon further information and report from any such person or persons, definitively approve the division of such parish into wards, and of the number of vestrymen assigned to each ward in manner hereinbefore mentioned: Provided also, that where any parish is already divided into wards under any local Act such parish shall be deemed to be divided into such wards for the purposes of this Act, without any division of such parish into wards being made as hereinbefore provided, but the number of vestrymen to be elected for such parish shall be apportioned as aforesaid among the wards of such parish by such person or

persons as may be appointed for that purpose as therein provided. *Id.* s. 3.

Power was given to the secretary of state to appoint persons to set out the wards; *Id.* s. 4; and to the metropolitan board to alter the number of vestrymen in each ward. *Id.* s. 5.

*Qualification of vestrymen.*] The vestry elected under this Act in any parish shall consist of persons rated or assessed to the relief of the poor upon a rental of not less than 40*l.* per annum: and no person shall be capable of acting or being elected as one of such vestry for any parish unless he be the occupier of a house, lands, tenements, or hereditaments in such parish, and be rated or assessed as aforesaid upon such rental as aforesaid within such parish: provided always, that in any parish in which the number of poor rate assessments at 40*l.* or upwards does not exceed one-sixth of the whole number of such assessments, it shall not be necessary, in order to qualify a person to be a vestryman, that the amount of rental upon which he is rated or assessed as aforesaid exceed 25*l.*: Provided also, that the joint occupation of any such premises as aforesaid, and a joint rating in respect thereof, shall be sufficient to qualify each joint occupier in case the amount of rental on which all such occupiers are jointly rated will, when divided by the number of occupiers, give for each such occupier a sum not less than the amount hereinbefore required. *Id.* s. 6.

*Term of office.*] Every election shall take place annually in the month of May in every year as the vestry appoint. *Id.* s. 7.

All members from time to time elected at the annual elections after the first election shall go out of office at the time appointed for the annual election in the third following year, except such members as are elected to supply vacancies occasioned otherwise than by effluxion of time; and such last-mentioned members shall go out of office at the respective times when the terms of office of the members in whose places they are respectively elected would have expired by effluxion of time. *Id.* s. 9.

At every election of vestrymen under this Act, except the first, for any parish or any ward of any parish, the parishioners of such parish entitled to vote in such election shall elect as many vestrymen as there are vacancies in the vestry, or among the vestrymen elected for such ward, whether such vacancies be occasioned by the expiration of the term of office, or by death or otherwise. *Id.* s. 10.

*Appointment of auditors.*] For every parish mentioned in either of the schedules (A.) and (B.), (*ante*, p. 424,) there shall be elected such number as hereinafter mentioned of the ratepayers of the parish who have signified in writing their assent to serve to be auditors of accounts, which auditors shall be so elected at the same times and in the same manner as members of the vestry; and the number of ratepayers so to be elected auditors in any parish not divided into wards under this Act shall be five, and the number of ratepayers so to be elected auditors in any parish which is divided into wards shall be the same as the number of wards, one auditor being elected in each ward: Provided always, that where the number of wards into which any parish is divided exceeds five, the vestry of such parish shall at their first meeting after the election of auditors as aforesaid, in any year, elect by ballot from among such auditors five of them, and the five persons so elected by ballot shall be the auditors for such parish exclusively of any other person or persons who may have been elected an auditor or auditors for such parish under the provisions herein contained; and a list of the five persons so elected by the vestry shall be forthwith published by the churchwardens in the parish as herein provided: Provided also, that no person shall be eligible to fill the office of auditor of accounts who is not qualified to fill the office of vestryman for the parish; but no person shall be eligible to fill the office of auditor who is a member of the vestry; and if any person be chosen to be both a member of the vestry and auditor of accounts he shall be incapable of acting as a vestryman. *Id.* s. 11.

The auditors first elected under this Act in any parish as aforesaid shall go out of office at the time appointed for the election of vestrymen and auditors in the year one thousand eight hundred and fifty-seven, and the auditors then elected and to be thereafter elected shall go out of office at the election of vestrymen and auditors in the year next following their election. *Id.* s. 12.

*Notice of elections.*] Every notice and list hereinbefore required to be published in any parish, or ward of any parish, shall be so published by being affixed in some public and conspicuous situation, on the outside of the outer door or outer wall near the door of every church and public chapel in such parish or ward, including places of public worship which do not belong to the established church, and if there be no such public building as aforesaid, then in some public and conspicuous situation within such parish or ward. *Id.* s. 26.

Every meeting of any vestry constituted by the said Act of the last session, of which and of the special purpose whereof

notice is now required by law to be affixed on or near the principal doors of the churches and chapels within the parish, may be conveyed by transmitting through the post or otherwise notice, signed by the clerk to the vestry, to each vestryman, at his usual or last known place of abode in England, of the place and hour of holding the same, and the special purposes thereof, three days before the day appointed for such meeting, and also by affixing at the same time notice thereof on or near the door of any building, where the said meeting is to be holden, and it shall not be necessary that notice of any such meeting shall be further or otherwise signed or published. 19 & 20 Vict. c. 112, s. 9.

*Proceedings at election of vestrymen.*] Where any parish is divided into wards, the churchwardens, three clear days at least before the day of election, shall appoint in writing under their hands a person to preside at such election as aforesaid in each of the said wards, except any ward in which one of the churchwardens shall preside, and notify such appointment to the vestry clerk of the parish. 18 & 19 Vict. c. 120, s. 14.

The rate collectors, or persons appointed by them, shall attend the churchwardens and persons presiding at elections under this Act, and inspectors of votes, to assist in ascertaining that the persons presenting themselves to vote are parishioners rated to the relief of the poor in the parish, or the respective wards thereof, and duly qualified to vote at the election. *Id.* s. 15.

On the day of election of vestrymen and auditors in any parish under this Act, the parishioners then rated to the relief of the poor in the parish, or, where the parish is divided into wards under this Act, in the ward thereof for which the election is holden, and who are desirous of voting, shall meet at the place appointed for such election, and shall then and there nominate two ratepayers of the parish, or (if the parish be divided into wards) of the ward for which the election is holden, as fit and proper persons to be inspectors of votes; and the churchwardens, or, in the case of a ward election, such one of the churchwardens as is present thereat, or, where one of the churchwardens is not present, the person appointed by them to preside thereat, shall, immediately after such nomination as aforesaid by the parishioners, nominate two other such ratepayers to be such inspectors; and after such nominations the said parishioners shall elect such persons duly qualified as may be there proposed for the offices of vestrymen and auditors or auditor; and the chairman at such meeting shall declare the names of the parishioners who have been elected by a majority of votes at such meeting: provided nevertheless, that no person shall be entitled to join or vote in any such

election for any parish, or any ward of any parish, or be deemed a ratepayer thereof, or be entitled to do any act as such under this Act, unless he have been rated in such parish to the relief of the poor for one year next before the election, and have paid all parochial rates, (except church rates, 19 & 20 Vict. c. 112, s. 7,) taxes, and assessments due from him at the time of so voting or acting, except such as have been made or become due within six months immediately preceding such voting or acting. 18 & 19 Vict. c. 120, s. 16.

Provided always, that any five ratepayers may then and there, in writing or otherwise, demand a poll, which shall be taken by ballot on the day next following, and shall commence at eight of the clock in the forenoon and close at such hour as hereinafter mentioned; that is to say, at six of the clock in the afternoon in the case of any election to be holden in November, 1855, and at eight of the clock in the afternoon in all other cases; each ratepayer depositing, as hereinafter provided, two folded papers, one of which papers shall contain the names of the persons for whom such parishioner may vote as fit and proper to be members of the vestry, and the other shall contain the names or name of the persons or person for whom such parishioner may vote as fit and proper to be auditors or auditor of accounts; and each ratepayer shall have one vote and no more for the members of the vestry, and one vote and no more for the auditors or auditor of accounts to be chosen in the said parish or ward. *Id.* s. 17.

The persons voting shall deposit such folded papers in two separate sets of balloting glasses or boxes, one set for voting papers for members of vestry, and another set for the voting papers for auditors or an auditor; and the said balloting glasses or boxes shall be closed at the time hereinbefore fixed for the closing of the poll; and the inspectors for the parish or ward (as the case may be) shall forthwith meet together, and proceed to examine the said votes, and if necessary shall continue the examination by adjournments from day to day, not exceeding two days (Sunday excepted), until they have decided upon the persons duly qualified according to the provisions of this Act who may have been chosen to fill the aforesaid offices. *Id.* s. 18.

In case an equality of votes appear to the aforesaid inspectors to be given for any two or more persons to fill either of the said offices, the inspectors shall decide by lot upon the person to be chosen. *Id.* s. 19.

Vestrymen after their election may resign or be re-elected, *Id.* ss. 55, 56.

*Forging voting papers.]* If any person knowingly personate and falsely assume to vote in the name of any parishioner en-



titled to vote in any election under this Act, or forge or in any way falsify any name or writing in any paper purporting to contain the vote or votes of any parishioner voting in any such election, or by any contrivance attempt to obstruct or prevent the purposes of any such election, the person so offending shall, on conviction before any two or more justices of the peace having jurisdiction in the parish, be liable to a penalty of not less than 10*l.* and not more than 50*l.*, and in default of payment thereof shall be imprisoned for a term not exceeding six nor less than three months. *Id.* s. 21.

*List of vestrymen elected to be published.*] The inspectors shall immediately after they have decided upon whom the aforesaid elections have fallen, deliver to the churchwardens, or to one of them, or other the person presiding at the election, a list of the persons chosen by the parishioners to act as vestrymen and auditors or an auditor of accounts; and the said list, or a copy thereof, shall be published in the parish as herein provided. *Id.* s. 22.

*Places for elections.*] The vestry of every parish mentioned in either of the schedules (A.) and (B.) to this Act shall provide such places as may be requisite for holding elections of vestrymen and auditors under this Act, and taking the poll thereat; and the expenses of providing such places, of publishing notices, of taking the poll, and of making the return at elections of vestrymen and auditors, shall be paid out of the poor rates of the parish by order of the vestry: provided always, that the places requiring to be provided for the first election under this Act of vestrymen and auditors in any parish shall be provided by the churchwardens, and the expenses of providing the same shall be paid out of the poor rates, upon their order. *Id.* s. 24.

*Voters at elections.*] It shall be lawful for any person occupying any tenement within any parish to claim to be rated to the relief of the poor in respect thereof in the rate for the time being, and in all rates to be thereafter made in respect of such tenement, whether the landlord be or be not liable to be rated to the relief of the poor in respect thereof; and upon such occupier so claiming, by notice in writing left at the office or place of residence of the overseers of the poor of the parish, or one of them, and actually paying or tendering at such office or place of residence the full amount of the last-made rate then payable in respect of such premises, such overseers are hereby required to put the name of such occupier on the rate for the time being, and also, without further claim, to put his name upon every subsequent rate made during the time

such occupier continues in the occupation of the same premises; and in case the said overseers neglect or refuse so to do, such occupier shall nevertheless, for the purposes of the said Act, be deemed to have been rated to the said rate in respect of such premises from the period at which the rate for the time being in respect of which he so claimed to be rated as aforesaid was made, and thenceforth so long as he continues in the occupation of the same premises: provided always, that every person so claiming as aforesaid shall in respect of every rate for the relief of the poor made after such claim as aforesaid, while he continues to occupy the same premises, be liable to the same extent and in the same manner as if his name had been put on such rate. 19 & 20 Vict. c. 112, s. 4.

Any occupier who under this Act is rated or deemed to be rated to the relief of the poor in any parish, and has been so rated or deemed to be rated for one year next before any election of vestrymen or auditors under the said Act, shall be entitled to vote in such election, and shall for the purposes of the said Act be deemed a ratepayer of such parish, and be entitled to act as such, provided all parochial rates, taxes, and assessments, save and except church rates, due in respect of the same premises at the time of his so voting or acting, except such as have been made or become due within six months immediately preceding such voting or acting, have been paid; but such occupier shall not be deemed to be a ratepayer so as to gain a settlement where he would not have gained a settlement if this Act had not been passed. *Id.* s. 6.

*Vestry meetings.*] All powers or duties to be performed by the vestry of any parish under this Act may be exercised and performed respectively by the major part of such vestry assembled at any meeting, there being not less than five vestrymen present at a meeting of a vestry which consists of not more than eighteen elected vestrymen, and not being less than seven vestrymen present at a meeting of a vestry which consists of twenty-four elected vestrymen and no more, and not being less than nine vestrymen present at a meeting of a vestry which consists of thirty-six elected vestrymen or upwards; and at every such meeting all questions shall be decided by the votes of the majority of the vestrymen present, and the vestry may act notwithstanding any vacancies therein. 18 & 19 Vict. c. 120, s. 28.

In any case in which the vestry-room of any such parish as aforesaid is not sufficiently large and commodious for any vestry meeting, such meeting shall be held elsewhere within the said parish, but not in the church or chapel thereof. *Id.* s. 29.

At every meeting of any vestry under this Act, in the absence of the persons authorized by law or custom to take the chair, the members present shall elect a chairman for the occasion before proceeding to other business, and the chairman, in case of an equality of votes on any question, shall have a second or casting vote. *Id.* s. 30.

*Powers of vestries.*] The powers of metropolitan vestries in reference to the health, management, and government of the metropolis, are too numerous to be here mentioned, being set forth at large in the above statutes, and also in *Woolrych's Metropolis Local Management Acts*.

## WATCHING AND LIGHTING.

1. *Adoption of the Act*, 437.
2. *The Inspectors, their Authority and Duties*, 443.
3. *The Rate*, 446.
4. *Watching*, 449.
5. *Lighting*, 451.
6. *Fire Engine*, 452.

### 1. ADOPTION OF THE ACT.

<i>The vestry meeting for the purpose</i> , 438.	<i>Act may afterwards be abandoned</i> , 441.
<i>Poll, if demanded, how taken</i> , 439.	<i>Proceedings, how, by part of a parish</i> , 442.
<i>Adoption of the Act</i> , 441.	<i>Churchwardens' expenses</i> , 443.
<i>Notice of the adoption given</i> , 441.	

By stat. 3 & 4 Will. 4, c. 90, s. 71, the provisions of this Act may be adopted in any parish [or part of a parish, sect. 77] either as to lighting or as to watching, or as to lighting and watching, as may be deemed expedient; and the provisions of this Act may be adopted in any parish so far as the same relate to lighting, although such parish shall be watched under or by virtue of any Act of parliament passed for that purpose, and may be adopted in any parish so far as the same relate to watching, although such parish shall be lighted under or by virtue of any Act of parliament passed for that purpose. And the powers here given to watch and light any parish, shall be understood to be given to any wapentake, division, city, borough, liberty, township, market town, franchise, hamlet, tithing, precinct, and chapelry, or parts within the same. *Id.* s. 77. But nothing in this Act shall be construed to interfere with the powers and provisions in the Metropolitan Police Act, 10 Geo. 4, c. 44, or to extend to any parish already regulated by or under the provisions of any Act of parliament for all the purposes herein provided for, or to interfere with the powers which any corporate body may have with respect to watching and lighting; *Id.* s. 72; nor shall it affect the rights, powers, or authorities of any commissioners of sewers; *Id.* s. 75; or

the rights or privileges of either of the universities. *Id.* s. 76. When a town council once adopts the Act, it cannot afterwards relinquish it. *Quick v. St. Ives*, 24 J. P. 790.

*The vestry meeting for the purpose.]* Upon the application in writing of three or more of the ratepayers of any parish, it shall be lawful for the churchwardens thereof, and they are hereby required, within ten days after the receipt of such application as aforesaid, to appoint and notify a time and place for a public meeting of the ratepayers of the said parish, for the purpose of determining whether the provisions in this Act contained shall be adopted and carried into execution in the said parish: provided always, that the time appointed for holding the said meeting shall not be less than ten days and not more than twenty-one days from the time of the said application so being delivered to them as aforesaid, and that notification of the time and place of meeting shall be made by forthwith affixing a notice on the principal outer door of every parish church or chapel situate within such parish, or on the usual place of affixing notices relating to the parochial affairs of any such parish, and also by publication of the same in the parish church or chapel on the Sunday previous to the day appointed for holding such meeting, during or immediately after divine service. 3 & 4 Will. 4, c. 90, s. 5.

And no person shall be deemed a ratepayer, or be entitled to vote, or do any other act, matter, or thing as such under the provisions of this Act, unless he or she shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such ratepayer, and shall have paid all the parochial rates, taxes, and assessments due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such voting. *Id.* s. 14.

Such person as may be elected by the ratepayers present shall preside as chairman at such meetings; and if any controversy shall arise at any such meeting as to the qualification or right of voting or eligibility of any person claiming to vote, or as to the qualification or eligibility of any candidate, such controversy shall be determined by the chairman presiding at such meeting. *Id.* s. 6.

The chairman who shall preside at any meeting assembled as herein directed, shall read or cause to be read the requisition whereupon the meeting shall have been summoned, and shall require the persons assembled thereat to determine by majority of votes, as herein mentioned, whether the provisions of this Act, as herein set forth, shall or shall not be adopted and acted upon within such parish: provided nevertheless,

that it shall be lawful for the majority of the ratepayers present to adjourn such meeting from time to time. *Id.* s. 7.

*Poll, if demanded, how taken.*] Any five rated inhabitants, qualified to vote as herein mentioned, may, at such meeting or adjournment thereof, in writing given to the chairman of the said meeting, demand a poll to be taken of the ratepayers qualified to vote upon the question as to whether this Act and the provisions thereof, or any part thereof, shall be adopted in such parish, and also as to the amount of money to be raised in the succeeding year for the purposes thereof, and the number of inspectors to be elected as determined at such meeting, and which said demand of a poll the said chairman is required forthwith to deliver to the churchwardens of the said parish. *Id.* s. 9.

And the churchwardens of the said parish shall, on the first Sunday next after the receipt of such demand of a poll, affix or cause to be affixed a notice on the principal outer door of every parish church or chapel situate within such parish, or on the usual place of affixing notices relating to parochial affairs of any such parish, specifying some day, not earlier than ten days and not later than twenty-one days after such Sunday, and at what place or places within the said parish, the ratepayers are required to signify their votes for or against the adoption of this Act, or such part thereof as may have been agreed upon at the said meeting, as well as with respect to the annual amount of money to be raised in the succeeding year for the purposes thereof, and the number of inspectors to be elected as determined at such meeting, which votes shall be received on two successive days, commencing at eight of the clock in the forenoon and ending at four of the clock in the afternoon of each day; *Id.* s. 10; which notice shall be to the following effect:—

*The churchwardens of this parish* [insert the name of the parish], *having received a demand for a poll, duly signed according to the provisions of an Act of the fourth year of the reign of King William the Fourth, intituled "An Act," &c.* [setting out the title of the Act], *the ratepayers of this parish of* [insert the name of the parish] *are hereby required, all and each of them, on the — day of — next, and the following day, to signify to the said churchwardens, by a declaration, either printed or written, or partly printed or partly written, addressed and delivered to one of the churchwardens at* [insert here the place], *their votes for or against the adoption of the aforesaid Act, or so much thereof as relates to watching or lighting* [as the case may be], *the amount of the money to be raised in the succeeding year for the purposes thereof being —* [here insert the sum agreed on at the meeting], *and the number of inspectors to be elected*

[insert the number also agreed on], such sum and such number of inspectors being fixed and determined upon at a meeting of the ratepayers called pursuant to the said Act.

(Signed)

—, Churchwardens.

The declaration, by sect. 11, may be to the following effect:

*I, A. B., of — street [or — place or house] in this parish of —, vote [for or against, as the case may be], the adoption of the Act of the fourth year of the reign of His Majesty King William the Fourth, intituled, "An Act," &c. [set out the title of the Act], or so much thereof as relates to watching or lighting [as in the notice], the amount of the money to be raised in the succeeding year for the purposes thereof being [as in notice], and the number of inspectors to be elected — [as in notice].*

The said churchwardens shall carefully examine the votes, and shall compare them with the last rate made for the relief of the poor of the parish, and shall be empowered to call before them and examine any parish officer touching the said votes, or any ratepayer so giving his vote, and after a full and fair summing up of the said votes shall, by public notice according to the form and manner hereinafter prescribed, declare whether or not two-thirds of the votes given have been given in favour of the adoption of the said Act (or so much thereof as relates to watching or lighting, as in the notice), and also as to the sum of money to be raised in the succeeding year, and the number of inspectors to be elected to be (as in the notice): provided always, that the whole number of persons voting shall be a clear majority of the ratepayers of the parish: provided also, that in case of a poll being demanded as aforesaid, the adoption or non-adoption of this Act, with the sum to be raised, and the number of inspectors to be elected as aforesaid, shall be decided by such number of votes as aforesaid. *Id.* s. 12.

And any of the ratepayers of the aforesaid parish, not exceeding five together, may inspect, at or in the vestry-room or in some convenient place within the same parish, and they are hereby empowered to inspect, the votes so given for and against the adoption of this Act, with the sum to be raised, and number of inspectors to be elected as aforesaid, at all reasonable times within one month after such notice shall have been given; and the churchwardens of the said parish are hereby required carefully to preserve the said votes, and freely to permit and allow the examination thereof by the aforesaid ratepayers of the said parish at all reasonable times within the period aforesaid. *Id.* s. 13.

*Adoption of the Act.*] If at any such meeting it shall be determined by a majority consisting of two-thirds of the votes of the ratepayers present at such meeting that the provisions of this Act shall be adopted, then and in such case such provisions shall from thenceforth take effect and come into operation in such parish; and it shall forthwith be determined that a certain number, not being more than twelve nor less than three inspectors, shall be elected to carry such purposes into effect; and the number of inspectors so determined upon shall be elected in manner hereinbefore mentioned. *Id.* s. 8.

But in case any such meeting convened as aforesaid, or, in case of a poll having been demanded as aforesaid, a majority of two-thirds of the voters as aforesaid, shall not have determined to adopt the provisions of this Act, it shall not be lawful for the inhabitants to meet again in less than one year from the period at which such meeting shall have been so convened as aforesaid. *Id.* s. 16. But the first meeting may be adjourned, and so this section will not apply. *E. v. Dunn*, 7 E. & B. 220.

And the ratepayers of such parish shall at their first meeting or at some adjournment thereof, and so on from time to time in every succeeding year at a meeting to be called for that purpose in manner herein directed, fix and determine the total amount of money which the inspectors shall have power to call for in any one year, in order to carry into effect the provisions of this Act, such sum to be raised in the manner herein directed, upon the full and fair annual value of all property rateable for the relief of the poor within such parish, such full and fair annual value to be computed according to the last valuation for the time being acted upon in assessing the poor's rate for the said parish. *Id.* s. 9.

*Notice of the adoption given.*] Notice of the adoption of this Act (or any part thereof, specifying it), with the amount of the sum to be raised in the succeeding year, and the number of inspectors to be elected by any parish, shall be forthwith given by the churchwardens for the time being of the said parish, by affixing a notice of the same to the principal door of every church and chapel within the said parish, or on the usual place of affixing notices relating to the parochial affairs of such parish; and in such case the provisions of this Act shall from thenceforth take effect and come into operation in the said parish. *Id.* s. 15.

*Act may afterwards be abandoned.*] It shall be lawful, however, for the inhabitants present at any meeting called in manner herein directed, at any time, after the expiration of three years from the time when the provisions of this Act shall



have been adopted, to determine that the provisions of this Act shall, from and after a day to be fixed upon at such meeting, cease to be acted upon; in which case, from and after such last-mentioned day, the provisions of this Act shall no longer be in force in such parish: provided nevertheless, that the provisions in this Act contained shall remain and continue in force for the purpose of collecting and recovering any rate which may have been previously made; and if on the abandonment and ceasing to act upon the provisions of this Act there shall be any balance in the hands of the said inspectors, after defraying the expenses incurred in carrying into effect the provisions of this Act, the said balance shall be paid over to the overseers of the poor of the said parish, to be applied in aid of the poor rates of the said parish. *Id.* s. 15.

*Proceedings, how, by part of a parish.*] It shall and may be lawful to and for the inhabitants of part of any parish to hold a meeting of the inhabitants of such part, to be convened in manner herein directed, and to be composed of such inhabitants only, for the purpose of determining whether the provisions in this Act contained, or any of them, shall be adopted and carried into execution in such part of the said parish; and all such meetings shall be subject and liable to all the clauses, regulations, and restrictions in this Act contained in respect of meetings to be convened for the purposes thereof; and the churchwardens of the said parish shall act in the same manner for such part of the parish, the inhabitants of which may be desirous of adopting the provisions of this Act, for carrying the provisions of the same into effect, as they could by virtue hereof act for the parish at large; and the overseers of the poor of the said parish, or of any township or division of the said parish, shall be amenable to the provisions of this Act, so far as they may relate to the part of such parish situate within or partly within the division or district for which such overseers shall act, for the purpose of levying, raising, and paying the rates within the part of such parish adopting the provisions of this Act, in the same manner as they would be if the whole parish, township, or place for which they act had adopted the provisions of this Act: provided always, that no proceedings of the said inhabitants, nor any rate to be raised or levied in pursuance of such proceedings, shall extend to any part of the said parish which may already be regulated by or under the provisions of any Act for the purposes in this Act mentioned, nor interfere with the powers and provisions of such Act or the execution thereof in any respect whatsoever. *Id.* s. 78. Where a district of a parish was assigned to a chapel, and chapelwardens appointed, who had authority in ecclesiastical matters only, all parochial business being transacted by the churchwardens

of the parish; a meeting of the inhabitants of the district, for the purpose of considering whether this Act should be adopted in the district, being called by the chapelwardens, it was holden that the meeting and the whole of the subsequent proceedings were null and void; that the meeting should have been called by the churchwardens of the parish. *R. v. Kingswinford*, 23 Law J. 337, qb.

*Churchwardens' expenses.*] The expenses incurred by the churchwardens, in calling such meeting, giving the notice aforesaid, and in taking such poll, shall be paid out of the rate collected for the relief of the poor in the said parish. *Id.* s. 12.

## 2. THE INSPECTORS, THEIR AUTHORITY AND DUTIES.

*How elected*, 443.

*Their meetings*, 445.

*Their appointment of officers*,  
445.

*Their accounts, when and how  
rendered*, 446.

*Actions by and against them*,  
446.

*How elected.*] The number of inspectors to be elected we have seen (*ante*, pp. 439, 440), is determined by the inhabitants, at the time they adopt the Act. By stat. 3 & 4 Will. 4, c. 90, s. 17, the inspectors shall be elected in manner following: (that is to say,) the churchwardens of any parish adopting the provisions of this Act shall, in the manner herein first directed, forthwith call a meeting of the ratepayers of such parish, and each candidate, being a person who shall reside within such parish, and who shall have been assessed or charged by the last rate made for the relief of the poor in respect of a dwelling-house or other tenement or premises of the annual value, according to the said rate, of 15*l.* or more, shall be eligible to be elected an inspector for the purposes of this Act, and shall be proposed at the said meeting by some person duly qualified to vote thereat, and shall be seconded by some other person in like manner qualified; and if more candidates than the number of inspectors authorized to be elected shall be proposed, and a poll shall be demanded by any ten persons qualified to vote on behalf of any such candidates, then the chairman shall open and proceed with such poll, and in a book or books prepared for that purpose, which book or

books the churchwardens are hereby required to cause to be prepared, shall enter or cause to be entered the names of all such candidates, and the name of every person duly qualified to be present and vote who shall desire to vote, together with his description and abode, and shall register the vote of every such person for every or any such candidate as every such person may respectively require; and if the votes of all the persons duly qualified and desirous to vote cannot be conveniently collected and registered by four of the clock of the same day upon which the poll shall have been commenced, then the chairman shall at that hour adjourn such poll to the day next succeeding, unless such day shall be a Sunday, Christmas Day, or Good Friday, and in that case to the day following, and then proceed to collect and register the votes of all persons duly qualified and applying to vote; provided nevertheless, that the poll shall finally close at four of the clock on the day to which it shall have been adjourned, or sooner, provided all persons duly qualified and desirous to vote shall have voted, and after the lapse of one hour without any person offering to vote; and as soon after the close of the poll as may be possible the result thereof shall be declared at the place where the election may have been holden, and certified by the chairman to the overseers of the poor; and the said churchwardens shall be reimbursed all such reasonable charges and expenses as may be incurred in providing clerks and books, and otherwise in the performance of the duties hereby required of them by the candidates at the said election for the said office: provided nevertheless, that if the provisions of this Act are adopted at the meeting first called for that purpose, the said inspectors may be appointed at the same time by the ratepayers of such parish then present, unless a poll shall be demanded, and if such poll should be demanded it shall be proceeded with as herein directed. *Id.* s. 17.

Afterwards at the annual meeting hereinafter mentioned, one-third of the inspectors, or as near thereto as the number appointed will admit of, shall go out of office in rotation; and in place of such inspectors so going out of office a like number of other inspectors shall be elected: provided always, that any of such out-going inspectors shall be re-eligible, and may be re-elected, and shall in such case continue to act and remain in office, anything herein to the contrary notwithstanding. *Id.* s. 19. And the chairman appointed to preside at such annual meeting shall proceed in such manner as the chairman at the first meeting to be held under this Act is hereinbefore directed to proceed at the election of the inspectors to be first appointed for the execution of this Act, and shall decide on questions which may arise as to the eligibility

or qualification of any person whatsoever, and as to all matters whatsoever connected with the said election, and shall declare the result of the same as aforesaid. *Id.* s. 20. So, if any inspector shall die, or become disqualified by change of residence or otherwise, or shall neglect to act, and in case of any casual vacancy happening in any manner whatever, so that the number of inspectors shall be reduced to less than three, notice shall be immediately given by the acting inspectors to the churchwardens of the parish, who shall forthwith, in the manner directed by this Act, call a meeting of the rated inhabitants as aforesaid for the purpose of filling up such vacancy or vacancies. *Id.* s. 21.

*Their meetings.*] The inspectors for executing this Act in any parish shall meet on the first Monday in every month, at noon, at some convenient place or office previously publicly notified; and at such monthly meeting it shall be lawful for any inhabitant rated to the relief of the poor of any such parish to appear there, and prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of this Act. *Id.* s. 22.

Special meetings may also be called by two inspectors at other times. *Id.* s. 23.

The inspectors shall keep minutes of their proceedings. *Id.* s. 30.

And the said inspectors shall and they are hereby required from time to time to order and direct a book or books to be provided and kept, in which book or books shall be entered true and regular accounts of all sums of money received, paid, and expended; and such book or books shall at all reasonable times be open to the inspection of the said inspectors and of every inhabitant rated to the relief of the poor of the parish adopting the provisions of this Act, without fee or reward. *Id.* s. 31. Also by sect. 61, it shall be lawful for the inspectors appointed by any parish adopting the provisions of this Act to unite with the inspectors of any adjoining parish or parishes, for the better carrying into effect the purposes of this Act.

*Their appointment of officers.*] The inspectors for the time being are authorized and required to appoint, during pleasure, such treasurer and other officers as they shall think necessary, at suitable salaries, and such officers shall give security and keep proper accounts and duly pay over monies, otherwise two justices may issue a distress warrant or commit them to the house of correction. *Id.* ss. 24, 25, 26, 27. And the officers shall not take any fees or be interested in any contracts. *Id.* s. 28.

*Their accounts, when and how rendered.]* The inspectors shall, within one month next after the expiration of twelve calendar months from the day of such adoption, give notice to the churchwardens of the said parish that they are ready to produce their accounts and vouchers for the previous year, and thereupon the said churchwardens shall give due notice in the manner required with respect to the first meeting to be held under this Act, that a meeting of the ratepayers of the said parish will be held at an hour and place in the said notice to be mentioned on some day, not being a Sunday, within ten days from the receipt of such notice, for the purpose of the said inspectors producing such accounts and vouchers, and for the election of inspectors for the execution of this Act, and for determining the amount of the money to be raised for the purposes of this Act for the current year; and in every future year such meeting shall, for the purposes aforesaid, be held on the same day in the corresponding month, except such day should fall on a Sunday, and then on the day following. *Id.* s. 18. And at such annual meeting the said inspectors shall produce their accounts and vouchers of all monies received and paid by virtue of this Act for the previous year; and a duplicate or copy of such accounts, verified on oath before any two justices by the said inspectors, or any two of them, shall be deposited with the said inspectors, and shall be open at all reasonable times to the inspection of all parties interested. *Id.* s. 19.

*Actions by and against them.]* The said inspectors may sue and be sued in the name of any one of the inspectors for the time being; and he shall be reimbursed his costs out of the monies to arise by virtue of this Act, except in case of his personal wilful neglect. *Id.* s. 29.

### 3. THE RATE.

*Order to the overseers, 446.  
Rate made and levied, 447.*

*Amount to be paid to treasurer, 448.*

*Order to the overseers.]* We have seen (*ante*, p. 439) that at the first meeting, and afterwards annually at a meeting to be called for the purpose, the inhabitants shall determine the total amount of money which the inspectors shall have the power to call for in the year, in order to carry into effect the provisions of the Act. And by sect. 32, as soon as the in-

spectors shall have been elected as aforesaid, it shall be lawful for them, or any two or more of them, from time to time to issue an order under their hands to the overseers of the poor of any parish to which the provisions of this Act shall be extended, by which order they shall require the said overseers to levy the amount mentioned in the said order. *Id.* s. 32.

And where persons other than the overseers of the poor shall by virtue of any office or appointment be authorized and required to make and collect or cause to be collected the rate for the relief of the poor in any parish to which all or any of the provisions of this Act shall be extended, such persons, by whatsoever title they may be called, shall be deemed to be overseers of the poor within the meaning of this Act, and to be included under and denoted by the words "overseers of the poor," for all the purposes of this Act, as fully as if they were commonly called or known by the title of overseers of the poor. *Id.* s. 37.

*Rate made and levied.]* The overseers aforesaid shall, for the purpose of collecting, raising, and levying the rate necessary for the purposes of this Act, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor in the said parish: provided always, that owners and occupiers of houses, buildings, and property (other than land) rateable to the relief of the poor in any such parish shall be rated at and pay a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated at and pay for the purposes of this Act: provided also, that the total amount of the sum to be collected, raised, and levied for the purposes of this Act, within any one year, shall not exceed such sum as shall have been agreed on by the inhabitants of the said parish as aforesaid, and that the said sum shall be assessed upon the full and fair annual value to which lands, houses, buildings, and other property within the said parish shall be rated or shall be rateable according to the last valuation made and acted upon for the rate for the relief of the poor within the said parish. *Id.* s. 33. It has been held that docks are "other than land" within this section. *Peto v. West Ham*, 28 Law J. 344, Q. B.

And it shall be lawful for the overseers of the poor of any such parish, and they are hereby required, whenever, according to the rate made for the relief of the poor, one and the same person shall be rated in one sum in respect of land, and also of houses, buildings, and other property, to cause such land, and also such other buildings and other property, to be separately assessed, and the sum hereby authorized to be levied

shall be assessed accordingly: provided always, that every court-yard, yard, or garden (such garden not being a market-garden or nursery ground) shall be included in and make part of the assessment to be made on the house, buildings, or other property to which they may be respectively attached; provided also, that such land, houses, buildings, and other property shall not in the whole be assessed at a higher amount than they were in the last rate made for the relief of the poor within the said parish. *Id.* s. 34. The town council may rate all the property within the borough to the watch rate. *Great Western Railway Company v. Maidenhead*, 11 C. B. (N. S.) 658.

And if the overseers of the poor of any parish adopting the provisions of this Act shall go out of office before they shall have collected or levied the amount mentioned in the order issued under the hands of the said inspectors in pursuance of this Act, they shall deliver to the succeeding overseers within seven days from the time they go out of office, a full and particular account in writing of the names of the parties to whom any money may be due on account of the rate made in pursuance of this Act, as well as the last order issued to them by the said inspectors; and in such case the succeeding overseers shall have the like powers and remedies under this Act for the collecting and recovery thereof, and shall be liable to the same penalties and forfeitures in case of the non-payment to the said inspectors, as their predecessors had or were liable to. *Id.* s. 35.

This statute gives an appeal against the rate in the same manner in every respect as an appeal against a poor rate. *Id.* s. 67.

*Amount to be paid to the treasurer.*] The overseers to whom any such order as aforesaid shall be issued, shall pay over the amount mentioned in such order to the treasurer to be appointed in the said parish under this Act within three calendar months from the delivery of such order to one of the overseers, and shall keep the accounts of the said rate levied for the purposes of this Act separate and distinct from the account of the rates levied in the same parish for the relief of the poor. For this sum the treasurer shall give them a receipt. *Id.* s. 36. And if the overseers do not pay over such sums the treasurer may apply to two justices for a distress warrant against them. *Id.* s. 38.

4. WATCHING.

*Watchmen appointed, 449. | Their power and duties, 450.*

*Watchmen appointed.*] The said inspectors shall from time to time appoint and employ such number of able-bodied watchhouse keepers, serjeants of the watch, watchmen, patrols, streetkeepers, and other persons as they shall think sufficient for the proper protection of the inhabitants, houses, and property, streets and other places within the limits of this Act, and regulate their duties and pay the expenses. *Id.* s. 39.

And the inspectors shall cause such a number of watchhouses or watchboxes to be provided, erected, or affixed, as they shall think necessary for watching all or any of the streets, roads, and places within the limits of this Act. *Id.* s. 45.

And all the clothing, arms, ammunition, and weapons shall be the property of the inspectors, and are to be given up on resignation, &c., under a penalty of 20*l.* *Id.* s. 40.

By stat. 3 & 4 Vict. c. 88 (see *ante*, p. 134, tit. *County Constables*), s. 20, it is enacted, that, notwithstanding anything contained in the Act 2 & 3 Vict. c. 93, the constables or watchmen appointed in and for any parish under the said Act 3 & 4 Will. 4, c. 90, shall continue to act, in their respective appointments, and all such Acts shall continue in force until it shall be notified by the chief constable of the county in which such parish, town, or place is situated, to the inspectors, &c., that he is ready to undertake the charge of such parish, town, or place; and upon the day so named, the watchmen or constables appointed within such parish, town, or place, under the said Act 3 & 4 Will. 4, c. 90, or under such local Act, shall be discontinued as a separate force; and all powers for assessing and levying any rate in such parish, town, or place, the whole or any part of which shall be applicable to the payment of such watchmen or constables, or any expenses incident thereunto, shall cease. 3 & 4 Vict. c. 88, s. 20.

And upon the day mentioned in such notice as last aforesaid, all watchhouses and watchboxes in any such parish or place, and all arms, accoutrements, and other necessities provided at the public expense for the watchmen or constables therein, shall be given up to such persons as shall be named by the said chief constable, for the use and accommodation of the constables to be appointed under stat. 2 & 3 Vict. c. 93.

And by stat. 19 & 20 Vict. c. 69, s. 18, until the constables or watchmen appointed in and for any parish, town, or place,



under the Act passed in the session holden in the third and fourth years of King William the Fourth, chapter ninety, or under any local Act authorizing the appointment of constables or watchmen, and authorizing rates to be made and levied for the purpose of defraying the expenses of such constables or watchmen, are discontinued as a separate force in manner provided by section 20 of the said Act of the third and fourth years of Her Majesty and by this Act, all the provisions of this Act applicable to the constables of any borough acting under the said Act of the fifth and sixth years of King William the Fourth shall be applicable to the constables or watchmen appointed under the said Act of the third and fourth years of King William the Fourth, or under such local Act as aforesaid, in and for such parish, town, or place, and until such discontinuance all the provisions of this Act applicable to the watch committee of a borough shall be applicable to the inspectors, commissioners, or other persons having the appointment of constables or watchmen in and for such parish, town, or place, and the police of such parish, town, or place shall be visited and inquired into by the inspectors under this Act; and the provision in this Act enabling the commissioners of Her Majesty's treasury to make payment towards the expenses of the police of a borough having a population exceeding 5,000, shall, until such discontinuance, extend to the police of such parish, town, or place as aforesaid having the like population. 19 & 20 Vict. c. 69, s. 18.

Provided, that where any such parish, town, or place, having such constables or watchmen as aforesaid, contains, according to the last parliamentary enumeration, a population of 15,000 persons or upwards, the chief constable of the county in which such parish, town, or place is situate shall not give notice, under the said section 20 of the said Act of the third and fourth years of Her Majesty, that he is ready to undertake the charge of such parish, town, or place, without the previous authority of one of Her Majesty's principal secretaries of state; and notice of the intention of the chief constable to apply to the secretary of state for such authority shall be published by such chief constable in such parish, town, or place, in manner directed by the said section 20 respecting the publication of the notice therein mentioned, fourteen days at least before such application is made. *Id.* s. 19.

*Their power and duties.]* The watchmen, serjeants of the watch, and patrols shall be sworn in as constables before any justice of the peace, and act as such while in execution of the

powers and authorities of this Act. 3 & 4 Will. 4, c. 90, ss. 41, 42.

And in all cases in which any of the duties usually performed by constables shall have been executed by any of the officers appointed by the inspectors as hereinbefore enacted, all fees and allowances for the performance of such duties shall be paid over to the said inspectors, to be by them applied in aid of the rate levied under the provisions of this Act. *Id.* s. 43.

## 5. LIGHTING.

*Lamps, gas, &c.*, 451.

| *Taking or damaging lamps, watchboxes, &c.*, 451.

*Lamps, gas, &c.*] It shall be lawful for the said inspectors and they are hereby empowered from time to time to cause such lamp irons or lamp posts or other posts to be put or fixed upon or against the walls or palisadoes of any houses, tenements, buildings, or inclosures, (doing as little damage as may be practicable thereto,) or to be put up and erected in such other manner within all or any of the said roads, streets, and places within the limits of this Act, as they shall think proper; and also to cause such number of lamps, of such sizes and sorts, to be provided and affixed and put upon such lamp irons and lamp posts, as they shall think necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with gas, oil, or otherwise, for such number of hours in every twenty-four hours as they shall think necessary; and also to cause such a number of watchhouses or watchboxes to be provided, erected, or affixed, as they shall think necessary for watching all or any of the streets, roads, and places within the limits of the Act. *Id.* s. 45. The Act then states a number of provisions as to the laying down of the gas pipes, contracting for gas, &c., which it is unnecessary to notice here. See sects. 46—54, 57—59.

*Taking or damaging lamps, watchboxes, &c.*] If any person shall wilfully break, throw down, spoil, or damage any watchhouse, watchbox, or lamp, lamp iron, lamp post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, it shall be lawful for any person or persons who shall see the offence committed to apprehend the offender, who shall forfeit any sum not exceeding 40s. for

every lamp, &c., and shall also make full satisfaction for the damage. *Id.* s. 55. As to the mode of proceeding for penalties given by the statute, see sects. 62—66.

Also, the property of and in all lamps, lamp irons, lamp posts, watchhouses, watchboxes, posts, chains, pales, and rails shall vest in the inspectors. *Id.* s. 60.

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#### 6. FIRE ENGINE.

It shall be lawful for the said inspectors from time to time to provide and keep up fire engines, with pipes and other utensils proper for the same, for the use of the parish adopting the provisions of this Act, and to provide a proper place or places for the keeping of the same, and to place such engines under the care of some proper person or persons, and to make him or them such allowance for his or their trouble as may be thought reasonable; and the expenses attending the providing and keeping of such engines shall be paid out of the money authorized to be received by the inspectors under the provisions of this Act. *Id.* s. 44.

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THE END.

**WORKS**

**PUBLISHED**

**BY**

**SHAW AND SONS,**

**LAW PRINTERS AND PUBLISHERS,**

**FETTER LANE,**

**LONDON.**

**E. C.**

**JANUARY,]**

**[1864.**



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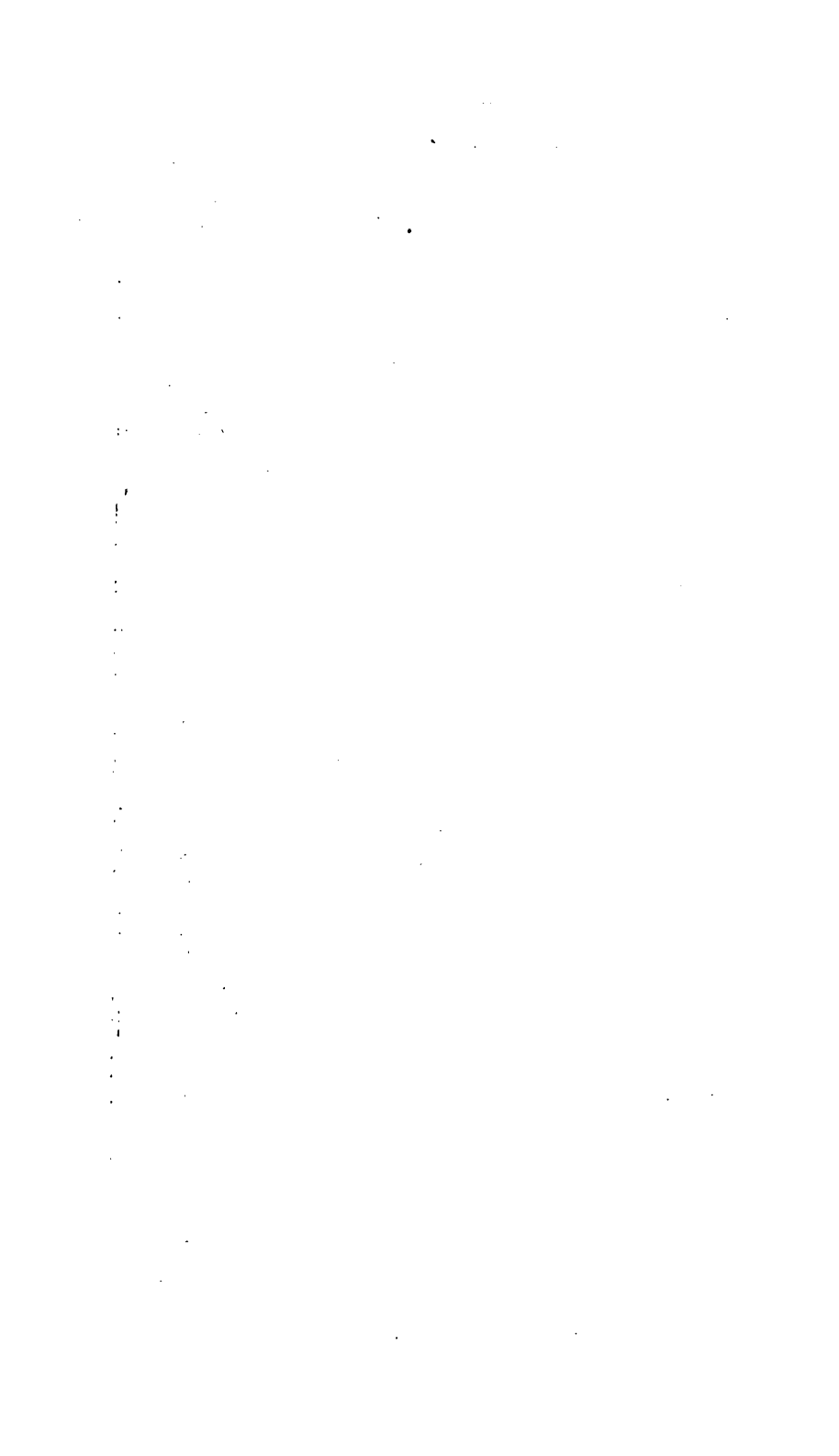
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